

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 29, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 24
 DEFENDANT.)
) PAGES 4227 - 4480

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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1 SAN JOSE, CALIFORNIA

APRIL 29, 2022

2 P R O C E E D I N G S

08:33AM 3 (COURT CONVENED AT 8:33 A.M.)

08:33AM 4 (JURY OUT AT 8:33 A.M.)

08:33AM 5 THE COURT: LET'S GO ON THE RECORD IN THE BALWANI
08:33AM 6 MATTER.

08:33AM 7 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

08:33AM 8 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

08:33AM 9 WE WERE GOING TO DISCUSS THIS MORNING, LET'S SEE, IT'S
08:34AM 10 DEFENSE 1416, MOTION TO EXCLUDE TRIAL EXHIBITS, AND 1417, THE
08:34AM 11 GOVERNMENT'S OPPOSITION.

08:34AM 12 SHOULD WE DISCUSS THOSE NOW?

08:34AM 13 MR. CAZARES: YES, YOUR HONOR.

08:34AM 14 MS. MCDOWELL WILL HANDLE ARGUMENT FOR THE DEFENSE.

08:34AM 15 THE COURT: GOOD MORNING.

08:34AM 16 MR. SCHENK: GOOD MORNING, YOUR HONOR.

08:34AM 17 THE COURT: SO LET ME START --

08:34AM 18 MS. MCDOWELL: GOOD MORNING, YOUR HONOR.

08:34AM 19 I'M VACCINATED.

08:34AM 20 THE COURT: YES, PLEASE.

08:34AM 21 MS. MCDOWELL: THANK YOU.

08:34AM 22 THE COURT: LET ME START WITH THE OPPOSITION.

08:34AM 23 AND MR. SCHENK'S TEAM TELLS US THAT THEY'RE NOT SEEKING TO
08:34AM 24 INTRODUCE THEIR 790 AND 4871.

08:34AM 25 DOES THAT END THE DISCUSSION?

08:34AM 1 MS. MCDOWELL: NO.

08:34AM 2 THE COURT: REGRETTABLY, NO.

08:34AM 3 MS. MCDOWELL: IT DOES NOT.

08:34AM 4 SO WE APPRECIATE THAT THEY'RE NOT GOING TO OFFER THOSE
08:35AM 5 EXHIBITS, BUT THEY DID INDICATE THAT THEY WERE GOING TO STILL
08:35AM 6 SEEK TESTIMONY ABOUT THOSE SAME TOPICS.

08:35AM 7 THE COURT: OKAY.

08:35AM 8 MS. MCDOWELL: SO I THINK THE ISSUES IN OUR MOTION
08:35AM 9 ARE STILL UP FOR DISCUSSION.

08:35AM 10 AND SO, YOUR HONOR, THE GOVERNMENT -- OUR POSITION IS THAT
08:35AM 11 THE GOVERNMENT SHOULD NOT BE PERMITTED TO ELICIT TESTIMONY
08:35AM 12 ABOUT PURPORTED MISREPRESENTATIONS MS. HOLMES MADE IN 2006 IN
08:35AM 13 THIS CASE BECAUSE MR. BALWANI HAS ABSOLUTELY NO ROLE OR NO
08:35AM 14 CONNECTION TO THOSE STATEMENTS, AND IT'S OUTSIDE OF ANY ALLEGED
08:35AM 15 CONSPIRACY IN THIS CASE.

08:35AM 16 SO AS A THRESHOLD MATTER, IF THE GOVERNMENT WERE TO ELICIT
08:35AM 17 THAT TESTIMONY, IT'S NOT ADMISSIBLE UNDER 401 AND THEN WE DON'T
08:35AM 18 SEE ANY PROBATIVE VALUE.

08:35AM 19 BUT IF THERE WERE SOME MINIMAL PROBATIVE VALUE, THE RISK
08:35AM 20 OF UNFAIR PREJUDICE IS SUBSTANTIAL HERE GIVEN THE JURY MAY
08:35AM 21 CONFLATE PURPORTED MISREPRESENTATIONS MS. HOLMES MADE IN 2006
08:36AM 22 WITH MR. BALWANI'S CRIMINAL INTENT, AND THAT'S JUST NOT
08:36AM 23 APPROPRIATE HERE.

08:36AM 24 AND I THINK IT'S IMPORTANT TO FRAME THE ISSUE WITH THE
08:36AM 25 FACTS THAT MR. TOLBERT NEVER MET MR. BALWANI. HE'S NEVER BEEN

08:36AM 1 ON A CALL WITH HIM.

08:36AM 2 MR. BALWANI DID NOT JOIN THE COMPANY UNTIL THREE YEARS
08:36AM 3 AFTER ANY EVENTS IN 2006 OCCURRED.

08:36AM 4 MR. BALWANI HAD NO AFFILIATION WITH THERANOS IN 2006, AND
08:36AM 5 THERE'S ABSOLUTELY NO EVIDENCE CONNECTING HIM TO THOSE
08:36AM 6 STATEMENTS.

08:36AM 7 SO IF THE GOVERNMENT WERE TO ELICIT TESTIMONY THAT -- AND
08:36AM 8 WE HAVE A PREVIEW OF THAT TESTIMONY IN THE HOLMES TRIAL -- AND
08:36AM 9 IT WAS ALONG THE LINES OF ELICITING TESTIMONY FROM MR. TOLBERT
08:36AM 10 ABOUT DETAILED STATEMENTS MS. HOLMES MADE ABOUT THE FINANCIAL
08:37AM 11 PROJECTIONS THAT WERE GIVEN TO MR. TOLBERT IN 2006, INCLUDING
08:37AM 12 THAT MR. TOLBERT BELIEVED THAT THERANOS WOULD BE CASH FLOW
08:37AM 13 POSITIVE BY 2007 AND THAT THEY WOULD SEE A SIGNIFICANT REVENUE
08:37AM 14 INCREASE BY 2008, AS WELL AS ELICITING TESTIMONY FROM
08:37AM 15 MR. TOLBERT ABOUT HIS UNDERSTANDING OF THERANOS'S WORK WITH
08:37AM 16 PHARMACEUTICAL COMPANIES AND THE SUBSTANTIAL REVENUE THEY WOULD
08:37AM 17 BE GETTING FROM THAT.

08:37AM 18 SO THE RISK HERE IS THAT THE JURY WILL BE LEFT WITH THE
08:37AM 19 IMPRESSION THAT MS. HOLMES MADE PURPORTED MISREPRESENTATIONS IN
08:37AM 20 2006 AND THAT THAT WILL BE CONFLATED WITH MR. BALWANI OUTSIDE
08:37AM 21 OF ANY ALLEGED CONSPIRACY.

08:37AM 22 THE COURT: OKAY. SO IS THERE ANY ARGUMENT OR
08:37AM 23 DISPUTE THAT MR. BALWANI, IN 2013, ANY CONDUCT THAT HE ENGAGED
08:37AM 24 IN AT THAT TIME, DOES THAT FALL WITHIN THE CHARGED TIME PERIOD?

08:38AM 25 MS. MCDOWELL: YOUR HONOR, I THINK THE GOVERNMENT

08:38AM 1 DID ADDRESS THAT IN THEIR MOTION, AND I THINK THERE IS AN ISSUE
08:38AM 2 AS TO WHETHER THE GOVERNMENT HAS SHOWN A CONSPIRACY AT THIS
08:38AM 3 POINT, BUT THAT IS AN ISSUE OF OUR MOTION THIS MORNING.

08:38AM 4 WE'RE FOCUSSED ON THE 2006 EVENTS, AND SO WE WOULD NEED
08:38AM 5 TO SEE WHAT SORT OF QUESTIONING THE GOVERNMENT SOUGHT ON THE
08:38AM 6 2013 TIME PERIOD AND WOULD PLAN TO OBJECT IF APPROPRIATE.

08:38AM 7 THE COURT: SURE. I'M SORRY, I DIDN'T ARTFULLY PUT
08:38AM 8 THAT QUESTION TO YOU. I APOLOGIZE.

08:38AM 9 MY QUESTION IS NOT WHETHER IT'S BEEN PROVED YET, BUT
08:38AM 10 WHETHER THERE IS EVIDENCE OF MR. BALWANI'S CONDUCT IN 2013.
08:38AM 11 THAT WOULD BE WITHIN THE CHARGED PERIOD.

08:38AM 12 MS. MCDOWELL: IF THERE IS EVIDENCE OF MR. BALWANI'S
08:38AM 13 STATEMENT IN 2013, YES, WE AGREE THAT IT'S WITHIN THE ALLEGED
08:38AM 14 CONSPIRACY IN THE INDICTMENT.

08:38AM 15 THE COURT: AND IS THERE ANY WAY TO RELATE THE 2006
08:39AM 16 REPRESENTATIONS MADE BY MS. HOLMES TO THE SAME INVESTORS WHO
08:39AM 17 INVESTED IN 2013 THAT'S RELEVANT TO THIS CASE?

08:39AM 18 MS. MCDOWELL: YOUR HONOR, I THINK IF YOU'RE ASKING
08:39AM 19 ABOUT KIND OF WHERE TO DRAW THE LINE, I DO THINK THAT SOME HIGH
08:39AM 20 LEVEL TESTIMONY ABOUT THE FACT THAT THE HALL GROUP INVESTED IN
08:39AM 21 2016, THE FACT THAT THAT INVESTMENT WAS \$2 MILLION OR WAS DONE
08:39AM 22 INDIRECTLY THROUGH CHRIS LUCAS'S GROUP, HIGH LEVEL TESTIMONY
08:39AM 23 ABOUT THE TYPES OF DILIGENCE THAT MR. TOLBERT DID IN 2006 I
08:39AM 24 THINK WOULD BE APPROPRIATE.

08:39AM 25 I THINK WHAT WE'RE CONCERNED WITH HERE IS ELICITING

08:39AM 1 TESTIMONY FROM MR. TOLBERT ABOUT SPECIFIC REPRESENTATIONS
08:39AM 2 MS. HOLMES MADE ABOUT FINANCIAL PROJECTIONS OR PHARMACEUTICAL
08:40AM 3 WORK THAT WOULD INTRODUCE PURPORTED MISREPRESENTATIONS THAT
08:40AM 4 COULD BE CONFLATED WITH MR. BALWANI.

08:40AM 5 AND THAT JUST EVISCERATES THE LIMITATIONS OF VICARIOUS
08:40AM 6 LIABILITY AND CONSPIRACY LAW.

08:40AM 7 THE COURT: THANK YOU. SO THEY'RE TWO DIFFERENT,
08:40AM 8 I'LL CALL THEM PITCHES, AND AGAIN, I DON'T MEAN ANYTHING
08:40AM 9 PEJORATIVE BY THAT, SO IT'S THE 2006 AND THEN THE 2013.

08:40AM 10 AND IN THE 2013, I THINK THE TRANSCRIPTS TELL US, 4489 TO
08:40AM 11 4493, I THINK, IT STARTS AT LINE 21 ON 4489, AND IT SEEMS THAT
08:40AM 12 WHAT MS. HOLMES IS SAYING IS SHE'S TALKING TO THE NEW INVESTORS
08:40AM 13 AND SAYING, REMEMBER, YOU CAME IN AT 70 -- PARDON ME, YOU CAME
08:41AM 14 IN EARLY, AND YOUR PRICE EARLY WAS \$0.82 A SHARE, BUT NOW WE'RE
08:41AM 15 OFFERING YOU THIS AT \$75 PER SHARE, AND THAT SHOULD SHOW YOU
08:41AM 16 HOW WELL WE'VE DONE.

08:41AM 17 THAT'S THE INFERENCE, ISN'T IT? HOW WELL WE'VE DONE,
08:41AM 18 WE'VE MANAGED ALL OF THIS. THE PRICE HAS INCREASED NOW TO 75,
08:41AM 19 WHICH SUGGESTS A TRAJECTORY, AN UPWARD TRAJECTORY, AND THAT'S
08:41AM 20 PART OF THE PITCH, YOU BETTER GET IN NOW, BECAUSE IF YOU DON'T
08:41AM 21 GET IN NOW, YOU WON'T -- YOU'LL GET IN LATER AND IT WILL COST
08:41AM 22 MORE, THAT TYPE OF THING.

08:41AM 23 AND THAT'S IN 2013. SO THAT REFERENCES BACK THE INITIAL
08:41AM 24 \$0.82 INVESTMENT, AND HOW DO YOU -- ISN'T THAT RELEVANT TO THE
08:41AM 25 2013 PITCH?

08:41AM 1 MS. MCDOWELL: I THINK THAT WOULD BE THE TYPE OF
08:41AM 2 TESTIMONY THAT WE WOULD SAY COULD BE ELICITED TO OFFER
08:41AM 3 BACKGROUND. SO THE FACT THAT THEY INVESTED IN 2006 AND WHAT
08:41AM 4 THAT SHARE PRICE WAS, I THINK THAT COULD BE APPROPRIATE.

08:42AM 5 WHAT WE'RE FOCUSSED ON IS JUST PURPORTED
08:42AM 6 MISREPRESENTATIONS THAT WERE MADE IN 2006.

08:42AM 7 AND I THINK THE GOVERNMENT'S RESPONSE BRIEF AT PAGE 6, I
08:42AM 8 THINK, IS REALLY TELLING AND IS TROUBLING, FRANKLY.

08:42AM 9 THEY SAY AT DOCKET 417 AT PAGE 6, "WHILE DEFENDANT WAS NOT
08:42AM 10 AN EXECUTIVE OF THERANOS AND DID NOT MAKE STATEMENTS TO THESE
08:42AM 11 INVESTORS PRIOR TO 2009, HE ADOPTED AND EMBELLISHED ANY PRIOR
08:42AM 12 STATEMENTS ABOUT THE COMPANY MADE BY HIS CODEFENDANT WHEN IN
08:42AM 13 2013 HE SPOKE WITH SEVERAL INVESTORS."

08:42AM 14 AND, YOUR HONOR, THAT IS -- THAT STATEMENT IS NOT ROOTED
08:42AM 15 IN ANY FACT OR EVIDENCE, AND LIKE I'VE SAID BEFORE, IT WOULD
08:42AM 16 COMPLETELY EVISCERATE THE LIMITS OF VICARIOUS CONSPIRACY LAW
08:43AM 17 GIVEN THAT THIS IS THREE YEARS BEFORE MR. BALWANI HAD ANYTHING
08:43AM 18 TO DO WITH THE COMPANY, AND IT'S SEVEN YEARS BEFORE THE CHARGED
08:43AM 19 CONDUCT AT ISSUE.

08:43AM 20 SO WE'RE FOCUSSED ON THE SPECIFIC STATEMENTS MS. HOLMES
08:43AM 21 MADE ABOUT THE FINANCIAL PROJECTIONS, WORK WITH PHARMACEUTICAL
08:43AM 22 COMPANIES, WHAT SORT OF REVENUE THAT WOULD BRING IN, AND WE SAW
08:43AM 23 THAT IN THE PREVIOUS TRIAL, AND THAT'S KIND OF WHAT WE'RE
08:43AM 24 FOCUSSED ON TODAY.

08:43AM 25 THE COURT: SO SHE -- THANK YOU.

08:43AM 1 SO SHE SAYS I THINK AT 4493, PAGE 4493, I THINK SHE TALKS
08:43AM 2 ABOUT THE PRIOR INVESTMENT AND THAT WAS ALL IN ESSENCE RAISING
08:43AM 3 CASH, AND WE'VE NOW MOVED FROM THAT. WE ARE NOW IN OPERATIONS.
08:43AM 4 AND THEN SHE STARTS TALKING ABOUT THE ASSOCIATIONS WITH
08:43AM 5 WALGREENS AND OTHERS.
08:43AM 6 AND FOR OPERATIONAL PURPOSES, WE NEED TO MOVE FORWARD
08:44AM 7 BECAUSE THERE ARE EXPENSES NECESSARY FOR BUILDOUTS, FOR ALL OF
08:44AM 8 THAT.
08:44AM 9 AND SHE'S -- IT SOUNDS LIKE SHE'S MOVING THAT TO A
08:44AM 10 DIFFERENT FUND RAISING.
08:44AM 11 SHE ACTUALLY SAYS -- WELL, I THINK SHE CALLS IT A AND
08:44AM 12 WE'RE NOW IN C, EXCUSE ME, AND A IS OPERATIONS AND WE'RE NOW
08:44AM 13 DONE WITH THAT AND FULL SPEED AHEAD AND \$75 A SHARE.
08:44AM 14 AND MR. BALWANI MADE -- I THINK THE EVIDENCE IS GOING TO
08:44AM 15 SHOW, PER THE GOVERNMENT'S REPRESENTATION, THAT MR. BALWANI MAY
08:44AM 16 HAVE MADE SIMILAR OR HAD SIMILAR CONVERSATIONS WITH INVESTORS
08:44AM 17 TOUTING THIS, AND THAT'S WHAT I'M FOCUSSED HOW DOES, AND THAT'S
08:44AM 18 WHAT I'LL ASK MR. SCHENK IN A MINUTE, HOW DOES THAT
08:44AM 19 INFORMATION, IF AT ALL, HOW DOES THE 2006 INFORMATION COME IN
08:45AM 20 AS TO MR. BALWANI WITHOUT VIOLATING ANY OF VICARIOUS LIABILITY
08:45AM 21 LIMITATIONS?
08:45AM 22 MR. SCHENK, MAYBE IT'S TIME TO TURN TO YOU.
08:45AM 23 MR. SCHENK: THANK YOU, YOUR HONOR.
08:45AM 24 THE COURT IS BEING ASKED TO EXCLUDE NOW JUST TESTIMONY, NO
08:45AM 25 LONGER EXHIBITS, BUT NOW TESTIMONY RELATED TO 2006.

08:45AM 1 THE COURT: RIGHT.

08:45AM 2 MR. SCHENK: AND IS BEING ASKED TO DO SO REALLY FOR
08:45AM 3 TWO REASONS, 401 AND 403.

08:45AM 4 ALLOW ME TO TAKE ACTUALLY 403 FIRST.

08:45AM 5 THERE IS NO CHANCE THAT THIS JURY WILL CONVICT MR. BALWANI
08:45AM 6 BECAUSE OF STATEMENTS MADE TO INVESTORS IN 2006, A TIME WHEN
08:45AM 7 MR. BALWANI DID NOT WORK AT THERANOS, AND THAT'S TRUE FOR A
08:45AM 8 COUPLE OF REASONS.

08:45AM 9 FIRST, THE GOVERNMENT DOESN'T INTEND TO ARGUE THAT
08:45AM 10 MR. BALWANI HAD ANY ROLE IN THOSE 2006 STATEMENTS;

08:45AM 11 SECOND, AS THE COURT JUST HEARD, MR. TOLBERT HAS, FRANKLY,
08:45AM 12 NEVER MET MR. BALWANI, SO HE'S NOT GOING TO TESTIFY THAT IN
08:45AM 13 2006 HE HAD INTERACTIONS WITH MR. BALWANI. THAT FACT WILL HOLD
08:46AM 14 TRUE THROUGHOUT THE REMAINDER OF HIS TIME.

08:46AM 15 BUT REALLY THERE'S KIND OF MORE OF AN OVERARCHING ARGUMENT
08:46AM 16 HERE. IMAGINE FOR A MOMENT THAT THE GOVERNMENT FAILED TO
08:46AM 17 DISCLOSE THIS 2006 EVIDENCE TO THE DEFENSE. THEY WOULD NOW BE
08:46AM 18 STANDING UP BEFORE YOUR HONOR AND SAYING, JUDGE, THE GOVERNMENT
08:46AM 19 COMMITTED A BRADY VIOLATION, THIS IS EXCULPATORY INFORMATION.
08:46AM 20 THE INVESTORS INVESTED AT A TIME WHEN MR. BALWANI WASN'T EVEN
08:46AM 21 THERE.

08:46AM 22 AND THE REASON I RAISE THAT HYPOTHETICAL IS THAT IT SHOWS
08:46AM 23 THAT THERE IS NO 403 RISK HERE. THERE IS NO CHANCE OF AN
08:46AM 24 UNFAIR PREJUDICE OCCURRING THROUGH THE ADMISSION OF THIS
08:46AM 25 EVIDENCE BECAUSE, IF ANYTHING, THE DEFENSE WOULD BE ARGUING TO

08:46AM 1 THE COURT IT IS EXCULPATORY. INVESTORS INVESTED AND
08:46AM 2 MR. BALWANI WASN'T EVEN THERE.

08:46AM 3 THAT IS THE GREATER RISK THAT THE JURY -- THE GREATER
08:46AM 4 CONCLUSION, FRANKLY, THAT THE JURY IS LIKELY TO DRAW FROM THE
08:46AM 5 INTRODUCTION OF THIS EVIDENCE, NOT THAT MR. BALWANI SHOULD BE
08:46AM 6 CONVICTED BECAUSE FALSE STATEMENTS WERE TOLD TO INVESTORS IN
08:47AM 7 2006.

08:47AM 8 IT ALSO ISN'T THE GOVERNMENT'S INTENT TO ARGUE ABOUT THE
08:47AM 9 TRUTH OR FALSITY OF THE STATEMENTS THAT MR. TOLBERT HEARD IN
08:47AM 10 2006, BUT RATHER THOSE STATEMENTS ARE THE FOUNDATION FOR THE
08:47AM 11 2013 STATEMENTS THAT MR. TOLBERT HEARS, THINGS LIKE WE BUILT
08:47AM 12 THE BUSINESS FROM CASH FROM OPERATIONS; THINGS LIKE
08:47AM 13 MR. TOLBERT'S UNDERSTANDING THAT THERANOS WAS A STARTUP WITH
08:47AM 14 UNPROVEN TECHNOLOGY IN 2006, BUT HE HAD A DIFFERENT VIEW OF THE
08:47AM 15 TECHNOLOGY, OF ITS PLACE IN EVOLUTION OR HOW MATURE IT WAS IN
08:47AM 16 2013.

08:47AM 17 AND THE ONLY WAY FOR THAT STORY TO BE TOLD TO THE JURY IS
08:47AM 18 BY MR. TOLBERT DESCRIBING THE CIRCUMSTANCES OF HIS 2006
08:47AM 19 INVESTMENT.

08:47AM 20 IN 2006 HE HEARS STATEMENTS ABOUT THERANOS'S FINANCES,
08:47AM 21 ABOUT THE STATE OF THE TECHNOLOGY AT THE TIME.

08:47AM 22 MS. HOLMES, OVER A MEAL, SHOWS HIM A PART OF THE
08:48AM 23 TECHNOLOGY. IT IS APPROPRIATE FOR THE JURY TO HEAR ALL OF THAT
08:48AM 24 BECAUSE UNDER 401, IT IS RELEVANT EVIDENCE BECAUSE IT FORMS THE
08:48AM 25 BASIS OF HIS UNDERSTANDING OF HIS 2013 DECISION TO INVEST.

08:48AM 1 AND TO DENY THE JURY THE CIRCUMSTANCES OF THE 2006
08:48AM 2 INVESTMENT LEAVES A SKEWED VIEW OF WHAT HE UNDERSTOOD IN 2013.

08:48AM 3 MR. TOLBERT, UNLIKE MS. PETERSON, WHO THE COURT RECENTLY
08:48AM 4 HEARD FROM, DIDN'T GET THE BINDERS, SO THE BASIS OF
08:48AM 5 MR. TOLBERT'S INVESTMENT WAS A COMBINATION OF THINGS HE HEARD
08:48AM 6 IN 2013 AND THINGS THAT HE HEARD IN 2006.

08:48AM 7 THAT'S WHAT MAKES 2006 RELEVANT, AND THERE IS NO CHANCE
08:48AM 8 THAT THE JURY CONVICTS MR. BALWANI BECAUSE OF STATEMENTS MADE
08:48AM 9 IN 2006 WHEN MR. BALWANI WASN'T THERE.

08:48AM 10 THE COURT: THANK YOU.

08:48AM 11 SO I SEE THAT CONNECTION. THAT'S WHAT I WAS SPEAKING TO
08:49AM 12 MS. MCDOWELL ABOUT. IT SEEMS THAT IT WOULD BE RELEVANT TO
08:49AM 13 INFORM THE 2013 INVESTMENT DECISION.

08:49AM 14 I JUST WANT TO TELL YOU, THAT SEEMS PRETTY TRANSPARENT TO
08:49AM 15 ME THAT -- AND PARTICULARLY WHEN I REFERENCED THOSE PAGES.

08:49AM 16 I DON'T KNOW IF THAT TESTIMONY IS GOING TO COME IN OR NOT,
08:49AM 17 BUT, YOU KNOW, REFERENCING WHAT MS. HOLMES SAID ABOUT THAT WAS
08:49AM 18 THEN, THIS IS NOW, WE'VE MOVED TO A DIFFERENT STAGE, IT'S A
08:49AM 19 DIFFERENT ROUND OF FUNDING, DIFFERENT PURPOSE OF FUNDING, AND
08:49AM 20 WHICH SUGGESTS GROWTH AND READY TO LAUNCH.

08:49AM 21 BUT, MR. SCHENK, WHAT I HEAR YOU SAYING IS THAT WE'RE NOT
08:49AM 22 GOING TO OFFER THAT, WE DON'T SEEK TO INTRODUCE THAT FOR THE
08:49AM 23 TRUTH OF WHAT WAS SAID IN THE 2006 CONVERSATION, BUT RATHER IN
08:49AM 24 SOME WAY TO INFORM MR. TOLBERT'S INVESTMENT DECISION IN 2013,
08:50AM 25 AND IT'S THAT INFORMATIONAL DIFFERENCE, IF YOU WILL, GROWTH

FROM '06 TO '13 THAT IS RELEVANT AS TO WHY HE DECIDED AT THAT POINT TO MAKE ANY INVESTMENT, IF HE DID.

IS THAT, IS THAT WHAT I SHOULD TELL THE JURY THEN?

MR. SCHENK: SO TO ANSWER THE COURT'S FIRST QUESTION, YES, THAT'S PRECISELY THE PURPOSE OF THIS EVIDENCE.

WE DO NOT INTEND TO INTRODUCE EVIDENCE OF THE EXACT DOLLAR AMOUNT OF REVENUE TOLBERT UNDERSTOOD THERANOS WOULD GENERATE IN 2007 AND THEN INTRODUCE EVIDENCE TO PROVE THAT NUMBER WASN'T TRUE, THAT NUMBER WASN'T REALIZED OR IT WAS FALSE AT THE TIME.

THE RELEVANCE OF THE EVIDENCE IS HOW IT INFORMS TOLBERT'S 2013 INVESTMENT DECISION.

IT SEEMS THE COURT IS NOW WONDERING WHETHER IT SHOULD GIVE A LIMITING INSTRUCTION FOR THIS EVIDENCE, AND I HAD A SIMILAR THOUGHT.

I THINK THE RIGHT ANSWER IS THAT WE WAIT AND SEE HOW THE EVIDENCE COMES IN. AND IT'S DIFFICULT AT THIS POINT TO SAY, WITHOUT KNOWING PRECISELY WHAT THIS JURY HEARS, WHETHER THERE IS SUCH AN EMPHASIS ON STATEMENTS MADE IN 2006, AND EVEN IN PARTICULAR MS. HOLMES MAKING FALSE STATEMENTS TO MR. TOLBERT IN 2006.

YES, IF IT GETS CLOSE TO THAT, IF THE WAY THAT MR. TOLBERT TESTIFIES OR THE WAY THAT I PHRASE QUESTIONS IS SUGGESTIVE TO THE JURY THAT THERE IS SOME NEFARIOUS INTENT BY MS. HOLMES IN THE FALSE STATEMENTS THAT MR. TOLBERT IS HEARING, I THINK WE SHOULD HAVE A DISCUSSION ABOUT WHETHER THE COURT GIVES A

08:51AM 1 LIMITING INSTRUCTION ON THE PURPOSE FOR THE 2006 TESTIMONY.

08:51AM 2 BUT I DON'T THINK, AS WE'RE HAVING THE DISCUSSION NOW, IT
08:51AM 3 SO OBVIOUSLY RISES TO THAT LEVEL. AND THE REASON I THINK THAT
08:51AM 4 IS BECAUSE OF THE 403 ARGUMENTS I MADE TO THE COURT A MOMENT
08:51AM 5 AGO.

08:51AM 6 THE RISK OF PREJUDICE FROM THESE STATEMENTS IS ALMOST
08:51AM 7 ZERO.

08:51AM 8 THE COURT: WELL, IF, IF -- AND I TAKE YOU AT YOUR
08:51AM 9 WORD THAT YOU'RE NOT GOING TO ARGUE IN ANY WAY THAT THE JURY
08:51AM 10 SHOULD FIND MR. BALWANI GUILTY FOR STATEMENTS MADE IN 2006.
08:52AM 11 THE COURT WOULDN'T PERMIT YOU TO DO THAT AND YOU WOULDN'T
08:52AM 12 ADVANCE THAT.

08:52AM 13 MR. SCHENK: YES, YOUR HONOR.

08:52AM 14 THE COURT: BUT I THINK THAT'S THE DANGER HERE IS,
08:52AM 15 CAN THEY SOMEHOW GET THERE?

08:52AM 16 WILL WE HAVE TO AND WILL WE NEED AN INSTRUCTION, A FINAL
08:52AM 17 INSTRUCTION THAT LIMITS THE SCOPE? I DON'T KNOW. THAT'S
08:52AM 18 ANOTHER POTENTIAL REMEDY. I DON'T WANT TO GET THERE YET,
08:52AM 19 BECAUSE AS YOU SAY, WE DON'T KNOW WHAT THE TESTIMONY IS. WE'RE
08:52AM 20 TRYING TO FRAME THAT.

08:52AM 21 MS. MCDOWELL: YES. THANK YOU, YOUR HONOR.

08:52AM 22 I DID HEAR FROM THE GOVERNMENT -- WHAT I'M HEARING FROM
08:52AM 23 MR. SCHENK IS THAT THEY ARE NOT GOING TO ELICIT TESTIMONY FROM
08:52AM 24 MR. TOLBERT ABOUT PURPORTED, SPECIFIC PURPORTED
08:52AM 25 MISREPRESENTATIONS MS. HOLMES MADE IN 2006.

08:52AM 1 SO IF THAT'S THE CASE, I THINK WE MAY BE ON THE SAME PAGE.
08:52AM 2 BUT I DO THINK THAT A LIMITING INSTRUCTION BEFORE
08:52AM 3 MR. TOLBERT TESTIFIES WOULD BE APPROPRIATE HERE, AND WE
08:53AM 4 ACTUALLY HAVE ONE THAT WE HAVE DRAFTED HERE IF I COULD PASS IT
08:53AM 5 UP.

08:53AM 6 THE COURT: IMAGINE THAT.

08:53AM 7 MS. MCDOWELL: YEAH (HANDING.)

08:53AM 8 THE COURT: YES. I DON'T KNOW ABOUT A LIMITING
08:53AM 9 INSTRUCTION BEFORE THE WITNESS TESTIFIES.

08:53AM 10 YOU HAVE THIS, MR. SCHENK?

08:53AM 11 MR. SCHENK: I DO.

08:53AM 12 MS. MCDOWELL: AND SO WHAT WE'RE PROPOSING HERE IS
08:53AM 13 IF THERE'S A SIGNIFICANT FOCUS ON THE 2006 EVENTS AND
08:53AM 14 STATEMENTS, THAT THE JURY IS INSTRUCTED THAT HIS TESTIMONY
08:53AM 15 RELATED TO EVENTS IN 2006 OR STATEMENTS MADE BY MS. HOLMES OR
08:53AM 16 MATERIALS HE REVIEWED IN 2006 CANNOT BE USED TO INFER ANYTHING
08:53AM 17 ABOUT MR. BALWANI'S KNOWLEDGE OR INTENT IN THIS CASE, AND I
08:53AM 18 WOULD HOPE THAT THE GOVERNMENT WOULD FIND THIS NOT TO BE
08:53AM 19 CONTROVERSIAL.

08:53AM 20 THIS IS -- YOU KNOW, OBVIOUSLY UNDER BLACK LETTER
08:53AM 21 CONSPIRACY LAW, YOU CAN'T IMPUTE MS. HOLMES'S CRIMINAL INTENT
08:54AM 22 OUTSIDE OF ANY CONCEIVABLE CONSPIRACY TO MR. BALWANI, SO I
08:54AM 23 THINK THAT THIS SORT OF LIMITING INSTRUCTION WOULD HELP
08:54AM 24 MITIGATE THE RISK THAT FAR.

08:54AM 25 THE COURT: OKAY.

08:54AM 1 MR. SCHENK.

08:54AM 2 MR. SCHENK: TWO POINTS.

08:54AM 3 I JUST WANT TO BE CLEAR, IT SOUNDED LIKE MS. MCDOWELL WAS
08:54AM 4 SAYING THAT HER UNDERSTANDING IS THAT THE GOVERNMENT DOES NOT
08:54AM 5 INTEND TO ELICIT SPECIFIC FALSE MISREPRESENTATIONS THAT
08:54AM 6 MS. HOLMES MADE TO MR. TOLBERT IN 2006.

08:54AM 7 WE DO INTEND TO ELICIT MISREPRESENTATIONS THAT MS. HOLMES
08:54AM 8 MADE TO MR. TOLBERT IN 2006.

08:54AM 9 THE QUESTION OF FALSITY COMES THROUGH PIECES OF EVIDENCE
08:54AM 10 COMPARING WHAT MS. HOLMES SAID AND THE REALITY. THE GOVERNMENT
08:54AM 11 DOES NOT INTEND TO DO THAT.

08:54AM 12 THE COURT: THAT'S WHAT I HEARD YOU SAY.

08:54AM 13 MR. SCHENK: YES. BUT I DON'T WANT THERE TO BE
08:54AM 14 CONFUSION ABOUT REPRESENTATIONS THAT TOLBERT HEARD IN 2006.

08:54AM 15 I DO INTEND TO ASK HIM, WHEN YOU WENT TO PALO ALTO IN
08:54AM 16 2006, WHAT DID YOU HEAR AND WHAT DID YOU LEARN?

08:55AM 17 THE COURT: AND THAT'S HOW I UNDERSTOOD IT,
08:55AM 18 MS. MCDOWELL, BECAUSE THAT DOES INFORM THEN A 2013, A 2013
08:55AM 19 INVESTMENT DECISION LOOKING BACK ON IT.

08:55AM 20 SO I -- MY SENSE IS NOW THAT THAT WOULD BE PERMITTED.

08:55AM 21 MS. MCDOWELL: UNDERSTOOD, YOUR HONOR.

08:55AM 22 SO IN THAT CASE, WE DO THINK THAT, YOU KNOW, A LIMITING
08:55AM 23 INSTRUCTION JUST TO GIVE THE JURY SOME GUIDANCE ON THIS ISSUE,
08:55AM 24 EITHER BEFORE MR. TOLBERT TESTIFIES OR AS THIS TESTIMONY COMES
08:55AM 25 IN, WE THINK THAT WOULD BE APPROPRIATE TO GUIDE THE JURY AS TO

08:55AM 1 HOW THEY SHOULD BE CONSIDERING THAT SORT OF TESTIMONY.

08:55AM 2 AND JUST TO BRIEFLY PREVIEW THE ARGUMENT THAT MY
08:55AM 3 COLLEAGUE, MR. CAZARES, THE OTHER MATTER THAT WE'RE GOING TO
08:55AM 4 TAKE UP THIS MORNING HERE IS THAT IT'S TROUBLING THAT THE
08:55AM 5 GOVERNMENT PLANS TO OBJECT TO ANY PLAYING OF THE TAPE IN 2013
08:55AM 6 THAT MS. HOLMES -- THE MS. HOLMES CONFERENCE CALL WHERE
08:56AM 7 MR. TOLBERT WAS ON.

08:56AM 8 AND THAT TAPE IS WHAT SHE ACTUALLY SAID DURING THE CHARGED
08:56AM 9 CONSPIRACY, BUT THEN THEY'RE FOCUSSED ON WANTING TO INTRODUCE
08:56AM 10 REPRESENTATIONS THAT MS. HOLMES MADE OUTSIDE OF ANY CONCEIVABLE
08:56AM 11 CONSPIRACY.

08:56AM 12 SO THAT'S TROUBLING TO US, AND WE THINK THAT AT THE VERY
08:56AM 13 LEAST A LIMITING INSTRUCTION WOULD HELP MITIGATE THE RISK TO
08:56AM 14 MR. BALWANI HERE.

08:56AM 15 THE COURT: OKAY.

08:56AM 16 MR. SCHENK: I'M NOT SURE I GET THE CONNECTION
08:56AM 17 BETWEEN THE RECORDINGS AND THIS ISSUE.

08:56AM 18 I WOULD LIKE THE COURT TO DEFER ON THE LIMITING
08:56AM 19 INSTRUCTION AND ALLOW THE GOVERNMENT SOME TIME TO REVIEW IT,
08:56AM 20 AND LET'S SEE HOW THE TESTIMONY COMES IN. BUT -- SORRY.

08:56AM 21 THE COURT: AS I SAID, I'M NOT INCLINED TO GIVE A
08:56AM 22 LIMITING INSTRUCTION BEFORE ANY EVIDENCE COMES IN UNLESS I KNOW
08:56AM 23 WHAT IT IS.

08:56AM 24 IF THERE'S A TRANSCRIPT, AN AGREED UPON TRANSCRIPT THAT IS
08:56AM 25 GOING TO BE SUBMITTED TO THE JURY, THAT'S THE APPROPRIATE TIME

08:56AM 1 TO GIVE A LIMITING INSTRUCTION, BUT HERE IT'S KIND OF FLUID.

08:56AM 2 SO I APPRECIATE THIS. WE'LL HOLD ON TO THIS AND HOLD ON
08:57AM 3 TO OUR SEATS AND SEE WHERE THE EVIDENCE TAKES US.

08:57AM 4 BUT AT LEAST, JUST FOR CLARITY'S SAKE HERE, THE GOVERNMENT
08:57AM 5 HAS SAID THAT THEY'RE NOT GOING TO INTRODUCE THE 37, 90, AND
08:57AM 6 4871 --

08:57AM 7 MS. MCDOWELL: CORRECT.

08:57AM 8 THE COURT: -- AS EXHIBITS. THAT WON'T COME IN.

08:57AM 9 TESTIMONY WILL COME IN AND THE COURT WILL PERMIT INQUIRY
08:57AM 10 OF MR. TOLBERT REGARDING, REGARDING STATEMENTS MADE BY
08:57AM 11 MS. HOLMES, I GUESS IT IS, ABOUT WHAT HE HEARD AND HOW THAT --
08:57AM 12 AND THE BASIS FOR THAT IS THE COURT FINDS IT IS RELEVANT FOR
08:57AM 13 HIS -- AND HE WILL TESTIFY, I ASSUME, ABOUT A 2013 INVESTMENT.
08:57AM 14 AND TO MATCH THOSE TWO TOGETHER, IT IS RELEVANT, THE COURT
08:57AM 15 FINDS, FOR HIM TO TESTIFY ABOUT THE 2013 DECISION.

08:57AM 16 AND I THINK WE KNOW HIS INITIAL INVESTMENT WAS \$2 MILLION,
08:57AM 17 AND THAT WAS NOT AN INVESTMENT THAT WAS MADE DIRECTLY. IT WAS
08:58AM 18 MADE THROUGH A THIRD PARTY AS I UNDERSTAND IT.

08:58AM 19 IT SEEMS TO BE RELEVANT AS TO WHY THAT INVESTMENT WAS
08:58AM 20 INCREASED TO \$5 MILLION AND CHANGED FROM A THIRD PARTY CONDUIT
08:58AM 21 TO A DIRECT INVESTMENT, AND I THINK THE JURY IS ENTITLED TO
08:58AM 22 HEAR ANY RELEVANCE ABOUT THAT, WHY THAT DISTINCTION CAME UP OR
08:58AM 23 WHAT THAT WAS ABOUT.

08:58AM 24 SO I'LL PERMIT INQUIRY IN THAT REGARD.

08:58AM 25 MS. MCDOWELL: THANK YOU.

08:58AM 1 UNDERSTOOD, YOUR HONOR.

08:58AM 2 I THINK THAT WHAT WE WOULD -- WHAT WE WERE FOCUSSED ON
08:58AM 3 WAS SPECIFICALLY THE FINANCIAL PROJECTIONS, DETAILS ABOUT THE
08:58AM 4 PHARMACEUTICAL COMPANIES, SO I GUESS WE'LL HAVE TO SEE HOW THE
08:58AM 5 TESTIMONY COMES IN, BUT WE WOULD SAY THAT WOULDN'T BE RELEVANT
08:58AM 6 TO INFORM THE 2013 INVESTMENT. THAT WAS RELEVANT TO INFORM THE
08:58AM 7 2006 INVESTMENT.

08:58AM 8 THE COURT: OKAY.

08:58AM 9 MS. MCDOWELL: YES.

08:58AM 10 THE COURT: ALL RIGHT. THANK YOU.

08:58AM 11 ANYTHING FURTHER --

08:58AM 12 MS. MCDOWELL: NO.

08:58AM 13 THE COURT: -- ON THIS?

08:58AM 14 MS. MCDOWELL: MY COLLEAGUE, MR. CAZARES, HAS
08:59AM 15 ANOTHER ISSUE TO TAKE UP.

08:59AM 16 THE COURT: OKAY. THERE'S SOMETHING ABOUT A TAPE?

08:59AM 17 MR. SCHENK: YES, YOUR HONOR.

08:59AM 18 MR. CAZARES: YES, YOUR HONOR. GOOD MORNING,
08:59AM 19 YOUR HONOR.

08:59AM 20 STEPHEN CAZARES FOR MR. BALWANI.

08:59AM 21 THE COURT: GOOD MORNING.

08:59AM 22 MR. CAZARES: SO WE WANTED TO ADDRESS AN ISSUE WITH
08:59AM 23 THE COURT RELATING TO MR. TOLBERT'S TESTIMONY RELATING TO THE
08:59AM 24 DECEMBER 2013 CONFERENCE CALL THAT I KNOW THE COURT RECALLS
08:59AM 25 FROM THE PRIOR TRIAL.

08:59AM 1 SO WHAT HAPPENED IN MS. HOLMES'S TRIAL WAS THE GOVERNMENT
08:59AM 2 IN ITS DIRECT EXAMINATION INTRODUCED EXCERPTS FROM THAT
08:59AM 3 12-20-2013 RECORDING OF MS. HOLMES SPEAKING TO INVESTORS.

08:59AM 4 THE DEFENSE INTRODUCED SOME SUPPLEMENTAL 106 PIECES ON THE
08:59AM 5 CROSS.

08:59AM 6 AND THEN THE PARTIES ARGUED IT OUT IN THE END.

08:59AM 7 WHAT I'M LEARNING FROM THE GOVERNMENT NOW IS THE
08:59AM 8 GOVERNMENT INTENDS, ON DIRECT EXAMINATION WITH MR. TOLBERT, TO
08:59AM 9 QUERY HIM ABOUT THAT CONFERENCE CALL, HIS RECOLLECTION OF A
08:59AM 10 CALL THAT TOOK PLACE ALMOST TEN YEARS AGO, USED SOME NOTES,
08:59AM 11 NON-VERBATIM NOTES THAT HE TOOK DURING THE CONFERENCE CALL AS
09:00AM 12 AN ANCHOR I GUESS AT SOME LEVEL FOR HIS RECOLLECTION.

09:00AM 13 BUT THEY DON'T INTEND TO INTRODUCE THE RECORDINGS
09:00AM 14 THEMSELVES OF WHAT MS. HOLMES ACTUALLY SAID, THE WORDS THAT THE
09:00AM 15 COURT KIND OF LEANED ON SOMEWHAT JUST NOW IN TALKING ABOUT THE
09:00AM 16 RELEVANCE OF THE 2006 STATEMENTS BY MS. HOLMES TO THE 2013
09:00AM 17 CONFERENCE CALL THAT LED TO MR. TOLBERT AND MR. HALL'S
09:00AM 18 INVESTMENT.

09:00AM 19 SO GIVEN THAT, THEY CAN TRY THEIR CASE HOW THEY WANT. I
09:00AM 20 MEAN, IT'S A LITTLE SHOCKING TO ME THAT THE GOVERNMENT WOULD
09:00AM 21 NOT INTRODUCE A RECORDING IN A FRAUD CASE OF A DEFENDANT OR A
09:00AM 22 CODEFENDANT OF WHAT THE DEFENDANT ACTUALLY SAID TO AN INVESTOR.

09:00AM 23 AGAIN, IT'S THEIR CHOICE.

09:00AM 24 BUT I'M TOLD THE GOVERNMENT IS NOW GOING TO OBJECT TO THE
09:00AM 25 DEFENSE USING THE RECORDING IN CROSS-EXAMINATION WITH

09:00AM 1 MR. TOLBERT.

09:00AM 2 WE THINK THE RECORDING IS RELEVANT.

09:00AM 3 THE COURT: TELL ME -- PARDON ME FOR INTERRUPTING
09:00AM 4 YOU. TELL ME, WHAT DO YOU WISH TO DO THEN ON
09:01AM 5 CROSS-EXAMINATION?

09:01AM 6 MR. CAZARES: TO PLAY THE RECORDING AND ASK HIM
09:01AM 7 QUESTIONS ABOUT WHAT MS. HOLMES SAID, WHAT HE THOUGHT ABOUT
09:01AM 8 THAT.

09:01AM 9 BECAUSE HE HAS ALREADY TESTIFIED, AND I'M ASSUMING HE'S
09:01AM 10 GOING TO TESTIFY AGAIN, THAT THIS RECORDING, THIS CONFERENCE
09:01AM 11 CALL, INFLUENCED HIS DECISION TO INVEST, WHICH IS A NONHEARSAY
09:01AM 12 PURPOSE.

09:01AM 13 THAT'S THE GOVERNMENT'S OWN THEORY FOR ELICITING THE
09:01AM 14 TESTIMONY FROM MR. TOLBERT REGARDING THE INVESTMENT, THAT IT
09:01AM 15 CAUSED HIM TO INVEST.

09:01AM 16 THE COURT: SO, SO --

09:01AM 17 MR. CAZARES: WE WANT TO RESPOND, CROSS-EXAMINE,
09:01AM 18 RELATING TO THE ACTUAL WORDS SHE SAID, NOT JUST HIS
09:01AM 19 RECOLLECTION OF WHAT SHE SAID.

09:01AM 20 THE COURT: SO YOU WANT TO PLAY THE ENTIRETY OF THE
09:01AM 21 TAPE?

09:01AM 22 MR. CAZARES: EXCERPTS, YOUR HONOR. EXCERPTS, MUCH
09:01AM 23 LIKE WHAT HAPPENED IN THE HOLMES TRIAL.

09:01AM 24 THE COURT: OKAY. AND DO YOU HAVE THOSE IDENTIFIED?

09:01AM 25 MR. CAZARES: THEY ARE MOSTLY ACTUALLY THE EXCERPTS

09:01AM 1 THAT THE GOVERNMENT USED THEMSELVES IN THE PRIOR TRIAL, ALONG
09:01AM 2 WITH ONE SUPPLEMENTAL THAT WE HAVE SHARED WITH THE GOVERNMENT.

09:01AM 3 THE COURT: OKAY.

09:01AM 4 MR. SCHENK: A FEW THOUGHTS.

09:01AM 5 IN THE HOLMES TRIAL, MS. HOLMES'S STATEMENTS ARE
09:02AM 6 ADMISSIONS. THE GOVERNMENT HAS AN EXCEPTION TO THE HEARSAY
09:02AM 7 RULE TO ADMIT THEM, AND IT WAS ON THAT BASIS THAT MS. HOLMES'S
09:02AM 8 STATEMENTS ARE ADMISSIBLE.

09:02AM 9 IN THIS TRIAL, I DON'T BELIEVE THERE'S AN EXCEPTION FOR
09:02AM 10 THE DEFENSE TO PLAY MS. HOLMES'S STATEMENTS AND THEN ARGUE THAT
09:02AM 11 THE STATEMENTS WERE TRUE.

09:02AM 12 I DON'T THINK THE DEFENSE IS GOING TO ARGUE THAT THE
09:02AM 13 STATEMENTS THAT MS. HOLMES MADE WERE FALSE.

09:02AM 14 THE POINT OF PLAYING THEM, AND I CAN POINT TO EVEN
09:02AM 15 PARTICULAR EXCERPTS THAT THE DEFENSE HAS SUGGESTED TO THE
09:02AM 16 GOVERNMENT THAT THEY INTEND TO PLAY, LIKE THE ONE ABOUT THE
09:02AM 17 WORK THAT THERANOS DID TO PREPARE FOR A NATIONAL ROLLOUT.

09:02AM 18 THE DEFENSE WILL ARGUE THAT THAT'S TRUE. THAT'S AN END
09:02AM 19 RUN AROUND THE HEARSAY RULES.

09:02AM 20 AND THEY ARE ADMITTING MS. HOLMES'S OUT-OF-COURT
09:02AM 21 STATEMENTS TO ESTABLISH THE TRUTH, BOTH THAT IT WAS RELEVANT --
09:02AM 22 I AGREE THAT THEY WILL ADMIT IT FOR THE PURPOSE OF ESTABLISHING
09:02AM 23 WHAT MATTERED TO TOLBERT. THEY CAN DO THAT THROUGH
09:02AM 24 QUESTIONING.

09:02AM 25 TO ADMIT MS. HOLMES'S STATEMENTS IS A VIOLATION OF THE

09:02AM 1 HEARSAY RULES.

09:02AM 2 WE -- THE GOVERNMENT DID NOT INTEND TO OFFER THE
09:03AM 3 RECORDINGS CASE-IN-CHIEF AND INTENDED RATHER TO ASK MR. TOLBERT
09:03AM 4 HIS RECOLLECTION OF THE RECORDINGS AND WHAT -- I'M SORRY, HIS
09:03AM 5 RECOLLECTION OF THE CALL AND THE INFLUENCE THAT THOSE
09:03AM 6 STATEMENTS HAD ON HIM.

09:03AM 7 BUT I ALSO WANT TO BE CLEAR, IF MY UNDERSTANDING OF THE
09:03AM 8 HEARSAY RULES IS INCORRECT AND, IN FACT, THE DEFENSE IS ALLOWED
09:03AM 9 TO OFFER THESE, I'LL PLAY THEM IN DIRECT.

09:03AM 10 MR. CAZARES: YOUR HONOR, FIRST OF ALL, THE
09:03AM 11 NONHEARSAY PURPOSE IS FOR WHAT MS. HOLMES ACTUALLY SAID, THE
09:03AM 12 ACT OF WHAT SHE SAID.

09:03AM 13 WE'RE NOT GOING TO ARGUE THAT WHAT SHE SAID WAS TRUE.

09:03AM 14 WHAT WE WANT TO PRESENT TO THE JURY SO THEY KNOW, WHAT DID
09:03AM 15 MS. HOLMES ACTUALLY SAY THAT LED TO MR. TOLBERT'S INVESTMENT?

09:03AM 16 NOT HIS VAGUE RECOLLECTION OF HIS UNDERSTANDING OF WHAT IT
09:03AM 17 MEANT, INTERPRETATIONS THAT HE'S PROBABLY GOING TO TESTIFY TO.

09:03AM 18 WHAT DID SHE ACTUALLY SAY, THE FACT OF WHAT SHE SAID?
09:03AM 19 THAT'S WHAT WE'RE TRUE INTRODUCING IT FOR.

09:03AM 20 WE'RE NOT GOING TO SIT HERE AND ARGUE THAT X, Y, AND Z WAS
09:04AM 21 TRUE IN THAT RECORDING. SIMPLY, THAT'S WHAT SHE SAID. IF YOU
09:04AM 22 UNDERSTOOD SOMETHING ELSE, MAYBE THAT'S ON YOU.

09:04AM 23 MAYBE THERE WAS SOME OTHER INFLUENCE ON MR. TOLBERT THAT
09:04AM 24 CAUSED HIM TO HAVE THAT UNDERSTANDING, BUT HER WORDS WERE IN
09:04AM 25 THE TAPE. THAT'S WHAT HE WAS TOLD.

09:04AM 1 THE OTHER NONHEARSAY PURPOSES IS OBVIOUSLY A ROUTINE
09:04AM 2 NONHEARSAY PURPOSE, EFFECT ON THE LISTENER, YOUR HONOR.
09:04AM 3 WHETHER IT IS A DEFENDANT OR NOT IS IRRELEVANT TO THAT RULE.
09:04AM 4 IT'S A COMMONLY HEARD HEARSAY EXCEPTION. THE EFFECT ON THE
09:04AM 5 LISTENER.

09:04AM 6 MR. TOLBERT HAS ALREADY SAID IN THIS COURT, UNDER OATH, I
09:04AM 7 LISTENED TO THE CONFERENCE CALL, IT WAS INFLUENTIAL, WE
09:04AM 8 INVESTED.

09:04AM 9 THAT'S A NONHEARSAY PURPOSE.

09:04AM 10 IN ADDITION, WHEN THE DEFENSE -- I'M SORRY. WHEN THE
09:04AM 11 GOVERNMENT INTRODUCES ITS TESTIMONY, AGAIN, BASED ON
09:04AM 12 RECOLLECTION OF THE CALL TEN YEARS AGO, AND NOTES, AGAIN, IT'S
09:04AM 13 AN IMPERFECT RECITATION OF WHAT MS. HOLMES SAID WHEN THE
09:04AM 14 GOVERNMENT ALREADY HAS THE TAPES.

09:04AM 15 THE RULE OF COMPLETENESS ALSO PERMITS THIS COURT TO
09:05AM 16 INTRODUCE -- TO ALLOW THE DEFENSE TO INTRODUCE THE RECORDING,
09:05AM 17 AGAIN, TO COMPLETE THE PICTURE OF WHAT SHE ACTUALLY SAID.

09:05AM 18 NOT HIS NOTES, WHICH ACTUALLY AREN'T EVEN THE ACTUAL
09:05AM 19 NOTES. THEY'RE A TRANSCRIPT OR A RECITATION THAT HE TYPED UP
09:05AM 20 FROM THE NOTES THAT HE THEN THREW AWAY. SO THERE ARE A COUPLE
09:05AM 21 OF LAYERS OF HEARSAY THERE AS WELL.

09:05AM 22 BUT THE POINT IS THAT HE'S GOING TO TESTIFY TO WHAT HE
09:05AM 23 THINKS SHE SAID, THE TAPES SHOW WHAT SHE ACTUALLY SAID, AND
09:05AM 24 THAT'S PERMITTED UNDER THE RULE OF COMPLETENESS AS WELL.

09:05AM 25 THE COURT: I'M NOT SURE IT'S A RULE OF COMPLETENESS

09:05AM 1 ISSUE. THAT'S MORE FOR WRITINGS AND --

09:05AM 2 MR. CAZARES: NO, NO. THERE'S NINTH CIRCUIT LAW,
09:05AM 3 U.S. VERSUS LOPEZ --

09:05AM 4 THE COURT: IF YOU'LL LET ME FINISH MY THOUGHTS.

09:05AM 5 MR. CAZARES: I APOLOGIZE.

09:05AM 6 THE COURT: THAT'S ALL RIGHT. THAT'S OKAY.

09:05AM 7 I UNDERSTAND LOPEZ AND I UNDERSTAND WHAT LOPEZ SAYS, BUT
09:05AM 8 I'M NOT CERTAIN THAT THAT'S THE STRONGEST ARGUMENT HERE FOR
09:05AM 9 ADMITTING THIS.

09:05AM 10 YOU SAY EFFECT ON THE LISTENER, AND THAT IS THE EFFECT --
09:06AM 11 THE INVESTMENT DECISION IN 2013, THAT EFFECT?

09:06AM 12 MR. CAZARES: YES.

09:06AM 13 THE COURT: AND THE DELTA BETWEEN THE 2006, AS WE'VE
09:06AM 14 BEEN TALKING ABOUT THIS MORNING, THE DELTA BETWEEN THAT AND THE
09:06AM 15 2013 INVESTMENT.

09:06AM 16 MR. CAZARES: YES, YOUR HONOR.

09:06AM 17 BECAUSE THE COURT WAS READING THE TRANSCRIPT THAT THE
09:06AM 18 GOVERNMENT PRESENTED TO YOU IN ITS RESPONSE TO OUR MOTION, AND
09:06AM 19 THE DETAILS --

09:06AM 20 THE COURT: I READ IT LAST NIGHT BEFORE I GOT THEIR
09:06AM 21 RESPONSE.

09:06AM 22 MR. CAZARES: THE DETAILS THAT THE COURT WAS READING
09:06AM 23 IS THE RECORDING.

09:06AM 24 THOSE DETAILS ARE NOT NECESSARILY REFLECTED IN HIS NOTES.
09:06AM 25 MAYBE HE'LL RECALL SOME OF THAT DETAIL, MAYBE HE WON'T.

09:06AM 1 BUT THE POINT IS THAT WHAT SHE ACTUALLY SAID AND WHAT
09:06AM 2 APPARENTLY HAD SOME RELEVANCE TO WHAT SHE, MS. HOLMES, TOLD
09:06AM 3 MR. TOLBERT IN 2013, ARE NUANCES THAT AREN'T REFLECTED IN THE
09:06AM 4 NOTES. HE MAY HAVE A RECOLLECTION OF IT, BUT THE RECORDING IS
09:06AM 5 THE BEST EVIDENCE OF WHAT SHE SAID.

09:06AM 6 THE COURT: OKAY. AND IT'S NOT OFFERED FOR THE
09:06AM 7 TRUTH OF --

09:06AM 8 MR. CAZARES: ABSOLUTELY NOT.

09:07AM 9 THE COURT: -- ANYTHING THAT MS. HOLMES SAID?

09:07AM 10 MR. CAZARES: JUST WHAT SHE SAID, NOT THE
09:07AM 11 TRUTHFULNESS OR FALSITY OF WHAT SHE SAID.

09:07AM 12 THE COURT: AND WHAT SHE SAID AND WHAT HE DID BASED
09:07AM 13 ON WHAT HE HEARD.

09:07AM 14 MR. CAZARES: YES.

09:07AM 15 THE COURT: AND HE CAN TESTIFY TO THAT WITHOUT THE
09:07AM 16 TAPE, CAN'T HE?

09:07AM 17 MR. CAZARES: WELL, HE IS GOING TO TESTIFY IN DIRECT
09:07AM 18 BASED ON RECOLLECTION AND SOME NOTES.

09:07AM 19 THE COURT: BUT, I MEAN, HE CAN TESTIFY ABOUT THAT
09:07AM 20 WITHOUT THE TAPE; RIGHT?

09:07AM 21 MR. CAZARES: YES, HE CAN.

09:07AM 22 THE COURT: SURE.

09:07AM 23 MR. CAZARES: AND OUR RESPONSE IS THAT THE REST OF
09:07AM 24 THE RECORDING, WHAT HER ACTUAL WORDS, ARE ACTUALLY WHAT CAUSED
09:07AM 25 HIM TO INVEST, AND THE JURY SHOULD HEAR THAT OUT OF FUNDAMENTAL

09:07AM 1 FAIRNESS, YOUR HONOR.

09:07AM 2 THIS IS AN INVESTMENT FRAUD CASE.

09:07AM 3 THE COURT: OKAY.

09:07AM 4 MR. CAZARES: THE INVESTOR IS GOING TO COME HERE AND
09:07AM 5 TALK ABOUT WHAT CAUSED HIM TO INVEST. SHOULDN'T THE JURY BE
09:07AM 6 PERMITTED TO HEAR THE WORDS THAT ACTUALLY CAUSED HIM TO INVEST?

09:07AM 7 THE COURT: OKAY. THANK YOU.

09:07AM 8 MR. SCHENK: THANK YOU, YOUR HONOR. A FEW THOUGHTS.
09:07AM 9 TOWARDS THE BEGINNING OF MR. CAZARES'S LAST INTERACTION
09:07AM 10 WITH THE COURT, HE TOLD THE COURT, AND WE MIGHT WANT TO GET
09:08AM 11 THIS TRANSCRIPT, THEY DO NOT INTEND TO ARGUE THE TRUTH OF THE
09:08AM 12 STATEMENTS THAT MS. HOLMES MADE ON THAT RECORDING.

09:08AM 13 ONE OF THE CLIPS THAT THEY TOLD THE GOVERNMENT THEY INTEND
09:08AM 14 TO PLAY IS 1348-4, AND IN DASH 4 MS. HOLMES SAYS, "OUR RETAIL
09:08AM 15 PARTNERS HAVE INVESTED HUNDREDS OF MILLIONS OF DOLLARS IN
09:08AM 16 BUILDING OUT THIS FRAMEWORK, AND WE, TOO, HAVE BEEN PREPARING
09:08AM 17 FOR THIS FOR MANY YEARS, AND THE GOAL IS TO BE ABLE TO BE
09:08AM 18 NATIONAL VERY, VERY, VERY, VERY QUICKLY."

09:08AM 19 IF THE DEFENSE IS ACTUALLY NOW TELLING THE COURT THEY DO
09:08AM 20 NOT INTEND IN CLOSING TO ARGUE THE TRUTH OF THAT AND OTHER
09:08AM 21 STATEMENTS THAT MS. HOLMES MADE, THAT IS NOT SOMETHING THAT I
09:08AM 22 THINK THEY'RE GOING TO WANT THE COURT TO HOLD THEM TO LATER ON
09:08AM 23 IN THE TRIAL.

09:08AM 24 AND THEY MIGHT WANT AN OPPORTUNITY TO REVISIT THAT
09:08AM 25 STATEMENT, BECAUSE I THINK THEY WILL ARGUE THE TRUTH OF THE

09:08AM 1 STATEMENTS THAT MS. HOLMES MADE.

09:08AM 2 THAT'S WHY THEY WANT TO PLAY THEM, BECAUSE THEY WANT TO
09:08AM 3 ARGUE THAT THINGS THAT MS. HOLMES SAID TO MR. TOLBERT WERE, IN
09:09AM 4 FACT, TRUE.

09:09AM 5 AND IF THE ADMISSION OF THIS TAPE WILL LEAD TO PREVENTING
09:09AM 6 OR BARRING THEM FROM ARGUING THE TRUTH, IT'S GOING TO
09:09AM 7 SIGNIFICANTLY AFFECT THE KIND OF ARGUMENTS THAT THEY PREVIEWED
09:09AM 8 IN OPENING AND I ANTICIPATE THEY'LL BE MAKING IN CLOSING.

09:09AM 9 MR. CAZARES: I CAN ADDRESS THAT, YOUR HONOR.

09:09AM 10 THE EVIDENCE -- OR EVIDENCE THAT WE BELIEVE THE DEFENSE
09:09AM 11 WILL BE ABLE TO USE TO ARGUE THAT RESOURCES AND PREPARATIONS
09:09AM 12 AND INTENT REGARDING A NATIONAL ROLLOUT ALL SUPPORTED
09:09AM 13 MR. BALWANI'S GOOD FAITH AND INTENT, THAT'S OUTSIDE OF THE
09:09AM 14 RECORDING. WE DON'T NEED TO POINT TO THE RECORDING TO SAY,
09:09AM 15 LOOK, WHAT SHE SAID IS TRUE.

09:09AM 16 WE HAVE OTHER EVIDENCE THAT SUGGESTS MR. BALWANI'S GOOD
09:09AM 17 INTENT WITH RESPECT TO THE ROLLOUT AND THE RESOURCES SPENT AND
09:09AM 18 INTENT TO DO THE NATIONAL ROLLOUT.

09:09AM 19 WHETHER OR NOT MS. HOLMES SAID THAT IN THE RECORDING IS
09:09AM 20 IRRELEVANT.

09:09AM 21 OUR POINT IS MR. TOLBERT HAS THOUGHTS IN HIS HEAD --

09:09AM 22 THE COURT: I UNDERSTAND YOUR ARGUMENT ABOUT
09:09AM 23 MR. TOLBERT, BUT I JUST WANT TO -- MR. SCHENK RAISES A POINT,
09:10AM 24 PERHAPS OF CAUTION DOWN THE ROAD, AND YOU'VE HEARD ME SAY
09:10AM 25 BEFORE, EVERYBODY PROCEEDS AT THEIR OWN PERIL.

09:10AM 1 IF I ALLOW THE TAPES TO BE PLAYED AND EXAMINATION TO BE
09:10AM 2 HAD ON THAT, AND BASED ON WHAT YOU SAID, YOU'RE NOT GOING TO
09:10AM 3 ARGUE THE TRUTH OF ANY OF THIS, THAT CUTS A BROAD PATH, AND IF
09:10AM 4 THAT'S WHAT YOU WOULD LIKE TO DO, SO BE IT.

09:10AM 5 MR. CAZARES: WELL, IT'S NOT THE TRUTH -- POINTING
09:10AM 6 TO HER WORDS IN THE RECORDING THAT WHAT SHE'S TOLD MR. TOLBERT
09:10AM 7 WAS TRUE.

09:10AM 8 WE HAVE OTHER EVIDENCE TO SHOW MR. BALWANI'S GOOD INTENT
09:10AM 9 BECAUSE MR. BALWANI WAS NOT ON THE RECORDING.

09:10AM 10 THE COURT: NO, I UNDERSTAND THAT.

09:10AM 11 MR. CAZARES: HE WASN'T THERE, HE DIDN'T LISTEN, AND
09:10AM 12 HE WASN'T ASKED QUESTIONS.

09:10AM 13 THE COURT: I UNDERSTAND. I FEAR WE GET DOWN TO A
09:10AM 14 POINT WHERE THERE ARE INSTRUCTIONS OR ARGUMENT AND THIS ISSUE
09:10AM 15 COMES UP AT A FUTURE TIME THAT WE'RE ALL REMINDED OF THE
09:10AM 16 LIMITATIONS OF WHAT YOU'RE ASKING.

09:10AM 17 MR. CAZARES: YOUR HONOR, YOUR HONOR, IT'S A FAIR
09:10AM 18 POINT.

09:10AM 19 BUT NONHEARSAY PURPOSE FOR HEARSAY INTRODUCED IN THIS
09:11AM 20 TRIAL ALREADY, AND I'M ASSUMING GOING FORWARD, IT'S BEEN PRETTY
09:11AM 21 ROUTINE, AND I THINK BOTH PARTIES ARE EXPERIENCED AND KNOW HOW
09:11AM 22 THEY CAN ARGUE THESE ISSUES AND THE GUARDRAILS, IF YOU WILL.

09:11AM 23 AND I KNOW THE COURT IS AWARE OF THAT IS AND IS GOING TO
09:11AM 24 HOLD US TO IT AND WE UNDERSTAND THAT.

09:11AM 25 MR. SCHENK: YOUR HONOR, JUST A COUPLE MORE POINTS.

09:11AM 1 FIRST, THE DEFENSE SEEMS TO BE SAYING, WE'RE GOING TO PLAY
09:11AM 2 TAPES AND NOT ARGUE THAT THEY'RE TRUE, AND THEN IN CLOSING
09:11AM 3 ARGUE THAT MS. HOLMES'S STATEMENTS WERE TRUE.

09:11AM 4 THAT'S AN END RUN AROUND THE HEARSAY RULES.

09:11AM 5 SECOND, THE RULE OF COMPLETENESS DOES NOT APPLY HERE. IF
09:11AM 6 I PLAY PORTIONS OF THE TAPES, THE DEFENSE GETS TO GO TO THE
09:11AM 7 COURT, OR TO THE GOVERNMENT, AND SAY, WE REQUEST, IF YOU PLAY
09:11AM 8 THIS PORTION AT THIS TIME, THAT IT IS APPROPRIATE AND FAIR FOR
09:11AM 9 YOU TO PLAY ANOTHER PORTION.

09:11AM 10 BUT TO SUGGEST THAT MY ASKING QUESTIONS OF TOLBERT ABOUT A
09:11AM 11 CALL REQUIRES, UNDER THE RULE OF COMPLETENESS, THAT THE CALL
09:12AM 12 THEN BE PLAYED IS NOT ACCURATE, AND THE GOVERNMENT WOULD NOT
09:12AM 13 OPEN THE DOOR TO THE PLAYING OF THE TAPE BY ASKING QUESTIONS
09:12AM 14 ABOUT A CALL ON DECEMBER 20TH.

09:12AM 15 MR. CAZARES: AND ON THAT POINT, YOUR HONOR, THE
09:12AM 16 PROBLEM IS THAT RULE 611 KIND OF INTERRELATES WITH THE RULE OF
09:12AM 17 COMPLETENESS.

09:12AM 18 WHILE THE RULE OF COMPLETENESS MAY BE LIMITED AT SOME
09:12AM 19 LEVEL, RULE 611 IS NOT AND PERMITS THIS COURT TO MAKE
09:12AM 20 REASONABLE CONTROL OVER THE MODE AND ORDER OF INTERROGATING
09:12AM 21 WITNESSES AND PRESENTING EVIDENCE TO MAKE, AGAIN, THE
09:12AM 22 INTERROGATION AND PRESENTATION EFFECTIVE AND COMPLETE.

09:12AM 23 TO THE EXTENT THAT THEY'RE INTRODUCING EVIDENCE OF A
09:12AM 24 CONVERSATION AND A DISCUSSION AND A CONFERENCE CALL THAT IS
09:12AM 25 ALREADY RECORDED, THEY'RE ENTITLED TO DO IT.

09:12AM 1 BUT RULE 611 CERTAINLY PERMITS THE COURT TO ALLOW THE
09:12AM 2 DEFENSE TO CLOSE THAT LOOP AND LET THE JURY HEAR THE REST OF
09:12AM 3 THE CONVERSATION THAT TOOK PLACE, THE WHOLE CONVERSATION, NOT
09:12AM 4 JUST SOMEONE'S RECOLLECTION.

09:12AM 5 THE COURT: OKAY. I UNDERSTAND THAT.

09:12AM 6 I'M RETURNING BACK TO THIS, AND I THINK MR. SCHENK RAISES
09:13AM 7 A GOOD POINT REGARDING MS. HOLMES'S TESTIMONY HERE AND WHAT YOU
09:13AM 8 MAY SEEK TO ARGUE.

09:13AM 9 AND I JUST WANT TO SAY, IT MAY BE THAT I WON'T LET YOU
09:13AM 10 ARGUE SOMETHING, SO I JUST WANT TO MAKE SURE THAT YOU'VE BEEN
09:13AM 11 ABLE TO CONSULT YOUR TEAM AND YOUR CLIENT TO UNDERSTAND THAT.

09:13AM 12 MR. CAZARES: WELL, YOUR HONOR, WE UNDERSTAND THE
09:13AM 13 ISSUES, I GUESS, TO THE EXTENT THAT THE GOVERNMENT HAS ISSUES
09:13AM 14 WITH ARGUMENT ABOUT TRUTHFULNESS, IT RELATES TO THE ROLLOUT,
09:13AM 15 AND I GUESS IT'S GOING TO BE MIDDLE EAST WORK BY THERANOS, OR
09:13AM 16 INTENT TO HAVE ITS DEVICE SOMEHOW USED BY THE MILITARY IN THE
09:13AM 17 MIDDLE EAST.

09:13AM 18 THERE'S OTHER EVIDENCE OF THAT WHICH WE CAN POINT TO WHICH
09:13AM 19 IS NOT CONNECTED TO THE ACTUAL CONVERSATION THAT MS. HOLMES
09:13AM 20 MADE.

09:13AM 21 THAT EVIDENCE WE CERTAINLY CAN POINT TO, AND THERE'S NO
09:13AM 22 REASON WHY WE SHOULD BE LIMITED ON IT BECAUSE THE RECORDING IS
09:13AM 23 COMING IN FOR A NONHEARSAY PURPOSE.

09:13AM 24 AND AGAIN, YOUR HONOR, THERE'S ALSO -- THE CATCH-ALL
09:14AM 25 EXCEPTION TO THE HEARSAY RULE ALSO SHOULD PERMIT THE RECORDING

09:14AM 1 HERE AND THE JURY SHOULD BE PERMITTED TO HEAR WHAT MS. HOLMES
09:14AM 2 ACTUALLY SAID, PARTICULARLY GIVEN, AGAIN, THE GOVERNMENT IS
09:14AM 3 GOING TO INTRODUCE STATEMENTS BY HER IN 2006 TO ATTEMPT IN SOME
09:14AM 4 WAYS, IF NOT ARGUE MR. BALWANI IS RESPONSIBLE FOR THAT, THAT
09:14AM 5 MS. HOLMES ARGUABLY MAKES OR HAS A PATTERN OF MAKING STATEMENTS
09:14AM 6 THAT MAY OR MAY NOT BE ENTIRELY ACCURATE TO INVESTORS, AND
09:14AM 7 GIVEN THAT, THE JURY SHOULD HAVE THE ACTUAL WORDS, YOUR HONOR,
09:14AM 8 NOT JUST THIS INVESTOR'S RECOLLECTION.

09:14AM 9 THE COURT: YOUR LAST STATEMENT GETS ME BACK TO SOME
09:14AM 10 CAUTION ABOUT WHAT ARE YOU GOING TO DO WITH THIS IF IT COMES
09:14AM 11 IN? AND ARE YOU GOING TO ARGUE ITS TRUTH?

09:14AM 12 AND IF SO, THERE'S SOME CAUTIONS THAT COME WITH THAT EVEN
09:14AM 13 IF IT -- EVEN IF YOU HAVE THIS OTHER EVIDENCE. I'M JUST SAYING
09:14AM 14 IT'S SOMETHING THAT WE HAVE TO LOOK AT VERY CAREFULLY, AND
09:14AM 15 THAT'S WHY I WAS PAUSING HERE TO MAYBE HAVE YOU -- IF YOU DON'T
09:15AM 16 NEED TO RETHINK THIS, THAT'S FINE. IF YOU'VE MADE YOUR
09:15AM 17 DECISION, THAT'S FINE.

09:15AM 18 MR. SCHENK.

09:15AM 19 MR. SCHENK: JUST TWO BRIEF THINGS.

09:15AM 20 THE LAST STATEMENT THAT MR. CAZARES MADE CERTAINLY SOUNDS
09:15AM 21 LIKE THE KIND OF ARGUMENT THAT THE GOVERNMENT WOULD MAKE BEFORE
09:15AM 22 IT WOULD ASK THE COURT TO ADMIT IT UNDER 801(D) (2) (E) .

09:15AM 23 MS. HOLMES HAS A WAY OF SAYING THINGS THAT ARE FALSE, JUDGE,
09:15AM 24 YOU SHOULD ADMIT THIS BECAUSE IT'S A COCONSPIRATOR'S STATEMENT.

09:15AM 25 I WOULD BE VERY SURPRISED IF THE BASIS THAT THE DEFENSE IS

09:15AM 1 SEEKING IS 801(D) (2) (E) . I THINK THERE ARE CASES THAT SAY THAT
09:15AM 2 THAT BASIS IS NOT AVAILABLE TO THE DEFENSE, 801(D) (2) (E) .

09:15AM 3 SECOND, BY READING THAT ONE PORTION ABOUT THE ROLLOUT, I
09:15AM 4 WAS NOT LIMITING WHAT THE GOVERNMENT WILL SAY THE DEFENSE IS
09:15AM 5 PROHIBITED FROM ARGUING FOR THE TRUTH IN THE FUTURE. I WAS
09:15AM 6 ONLY GIVING ONE EXAMPLE.

09:15AM 7 IF THE DEFENSE TRIES TO ADMIT THE TAPE, AND IF THE COURT
09:15AM 8 OVERRULES A HEARSAY OBJECTION AND ALLOWS IT TO BE PLAYED, I
09:16AM 9 WILL LISTEN VERY CAREFULLY TO WHAT THE DEFENSE PLAYS, AND THEN
09:16AM 10 I'LL EVALUATE WHETHER I'M GOING TO ARGUE TO THE COURT THAT EACH
09:16AM 11 OF THE DIFFERENT CATEGORIES OF STATEMENTS THAT THE JURY HEARD
09:16AM 12 CANNOT BE ARGUED FOR THE TRUTH BY THE DEFENSE, NOT JUST THE
09:16AM 13 ROLLOUT.

09:16AM 14 MR. CAZARES: YOUR HONOR, LOOK, WE WOULD LIKE TO
09:16AM 15 THINK ABOUT IT. I UNDERSTAND THE COURT'S CONCERNS.

09:16AM 16 I UNDERSTAND MR. TOLBERT IS COMING UP SECOND, SO MAYBE WE
09:16AM 17 CAN REVISIT THIS BEFORE HE ACTUALLY TAKES THE STAND.

09:16AM 18 THE COURT: OKAY. WELL, I THINK THAT'S A MEASURED
09:16AM 19 APPROACH.

09:16AM 20 THANK YOU FOR THE CONVERSATION THIS MORNING. IT'S AN
09:16AM 21 IMPORTANT DECISION FOR THE COURT.

09:16AM 22 I THINK IT'S MORE IMPORTANT FOR THE PARTIES TO DECIDE HOW
09:16AM 23 THEY WANT THEIR CASE PRESENTED, AND THAT'S SOMETHING THAT I
09:16AM 24 THINK DESERVES SOME THOUGHT, SO THANK YOU FOR THAT.

09:16AM 25 SO WE'LL RESERVE DISCUSSION ON THIS UNTIL LATER. THANK

09:16AM 1 YOU FOR TELLING ME THE TIMING OF THAT.

09:16AM 2 SO MOVING TO SCHEDULING. THE FIRST WITNESS TODAY WILL BE?

09:16AM 3 MR. SCHENK: MR. MENDENHALL.

09:16AM 4 THE COURT: AND WHAT IS OUR TIMING WITH THAT?

09:17AM 5 MR. BOSTIC?

09:17AM 6 MR. BOSTIC: YOUR HONOR, I THINK THE DIRECT FOR

09:17AM 7 MR. MENDENHALL WILL BE ABOUT AN HOUR.

09:17AM 8 THE COURT: AND IS HE YOUR WITNESS?

09:17AM 9 MR. CAZARES: HE IS. PROBABLY SIMILAR IF NOT THAT

09:17AM 10 MUCH LONGER. SO MAYBE UNTIL OUR FIRST BREAK, MAYBE A LITTLE

09:17AM 11 AFTER THE FIRST BREAK, BUT --

09:17AM 12 THE COURT: OKAY. AND THEN THE NEXT WITNESS WILL BE

09:17AM 13 MR. TOLBERT. AND IS IT EXPECTED THAT WE WILL FINISH

09:17AM 14 MR. TOLBERT TODAY?

09:17AM 15 MR. SCHENK: WE WOULD CERTAINLY FINISH THE DIRECT

09:17AM 16 TODAY IF WE'RE STARTING AROUND 11:30 OR SO.

09:17AM 17 THE COURT: RIGHT, RIGHT.

09:17AM 18 MR. SCHENK: THE DIRECT WOULD CERTAINLY FINISH, AND

09:17AM 19 FINISH I WOULD SAY WITH HOURS LEFT IN THE AFTERNOON.

09:17AM 20 THE TAPE ISSUE ASIDE --

09:17AM 21 THE COURT: RIGHT.

09:17AM 22 MR. SCHENK: OBVIOUSLY IT TAKES A LITTLE LONGER IF I

09:17AM 23 PLAY THE TAPES.

09:17AM 24 MR. CAZARES: PROBABLY A GOOD CHANCE WE CAN FINISH

09:17AM 25 HIM, OR WE WILL MAKE OUR EFFORTS.

09:17AM 1 THE COURT: YOU DO WHAT -- EACH SIDE DOES WHAT YOU
09:17AM 2 NEED TO DO. THERE'S NO TIME RESTRICTIONS. I'M JUST TRYING TO
09:17AM 3 SCHEDULE FOR OUR SCHEDULING PURPOSES.

09:17AM 4 REMIND ME AGAIN HOW LONG THE TAPE WAS. I JUST DON'T
09:17AM 5 RECALL WHAT THAT WAS OFF THE TOP OF MY HEAD, JUST IN TOTAL WHAT
09:18AM 6 THAT TOOK.

09:18AM 7 IS THAT ABOUT A 20 MINUTE CONVERSATION?

09:18AM 8 MR. CAZARES: THERE WERE SEVEN EXCERPTS. AN
09:18AM 9 ESTIMATE OF THOSE SEVEN IS PROBABLY 30, 35 MINUTES, AND THEN I
09:18AM 10 THINK THE DEFENSE HAS AN ADDED EXCERPT. SO MAYBE 35 MINUTES
09:18AM 11 TOTAL, 40 MINUTES. THE ENTIRE RECORDING IS MUCH LONGER, BUT
09:18AM 12 THE TOTAL EXCERPTS I THINK FALL SOMEWHERE IN THAT RANGE.

09:18AM 13 THE COURT: RIGHT.

09:18AM 14 MR. SCHENK: WE STARTED THE TAPE AT 1:30 WITH
09:18AM 15 MR. TOLBERT AND WE FINISHED AT 3:00, BUT WE TOOK A HALF AN HOUR
09:18AM 16 BREAK.

09:18AM 17 THE COURT: RIGHT. AND THERE WERE MULTIPLE SEGMENTS
09:18AM 18 PLAYED AND QUESTIONS, ET CETERA.

09:18AM 19 MR. SCHENK: THERE WERE, I THINK, A TOTAL OF EIGHT
09:18AM 20 CLIPS PLAYED ON THE DIRECT, AND THEN I THINK MR. DOWNEY PLAYED
09:18AM 21 TWO CLIPS IN CROSS.

09:18AM 22 THE COURT: ALL RIGHT. GREAT. THANK YOU.

09:18AM 23 ALL RIGHT. I'LL STEP DOWN. WE'LL GET READY AND WE'LL
09:18AM 24 BRING OUR JURY IN.

09:19AM 25 MR. CAZARES: THANK YOU.

09:19AM 1 MR. SCHENK: THANK YOU.

09:19AM 2 (RECESS FROM 9:19 A.M. UNTIL 9:27 A.M.)

09:27AM 3 (JURY IN AT 9:27 A.M.)

09:27AM 4 THE COURT: THANK YOU AGAIN FOR YOUR COURTESY.

09:27AM 5 WE ARE BACK ON THE RECORD.

09:28AM 6 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:28AM 7 OUR JURY AND ALTERNATES ARE PRESENT.

09:28AM 8 GOOD MORNING, LADIES AND GENTLEMEN. I HAD TO GET SOME

09:28AM 9 HELP FROM THE LAWYERS ON SOME MATTERS THIS MORNING, AND THAT'S

09:28AM 10 WHY WE WERE DELAYED THIS MORNING. I APOLOGIZE FOR THAT.

09:28AM 11 BEFORE WE START, LET ME ASK YOU THAT QUESTION AGAIN.

09:28AM 12 DURING OUR BREAK, HAVE ANY OF YOU HAD CAUSE TO LEARN, LISTEN,

09:28AM 13 READ, OR DISCUSS ANYTHING ABOUT THIS CASE IN ANY WAY?

09:28AM 14 IF SO, COULD I JUST SEE YOUR HAND?

09:28AM 15 I SEE NO HANDS. THANK YOU VERY MUCH.

09:28AM 16 DOES THE GOVERNMENT HAVE A WITNESS TO CALL?

09:28AM 17 MR. BOSTIC: YES, YOUR HONOR.

09:28AM 18 THE UNITED STATES CALLED PATRICK MENDENHALL.

09:28AM 19 THE COURT: THANK YOU.

09:28AM 20 SIR, IF YOU WOULD COME FORWARD, PLEASE. LET ME INVITE YOU

09:28AM 21 TO STAND OVER HERE BY THE WITNESS STAND.

09:28AM 22 IF YOU WOULD RAISE YOUR RIGHT HAND WHILE YOU FACE OUR

09:29AM 23 COURTROOM DEPUTY, SHE HAS A QUESTION FOR YOU.

09:29AM 24 **(GOVERNMENT'S WITNESS, PATRICK MENDENHALL, WAS SWORN.)**

09:29AM 25 THE WITNESS: YES, I DO.

09:29AM 1 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR.

09:29AM 2 I'LL INVITE YOU TO MAKE YOURSELF COMFORTABLE.

09:29AM 3 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

09:29AM 4 NEED, AND YOU CAN BEND THAT DOWN.

09:29AM 5 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

09:29AM 6 AND THEN SPELL IT PLEASE.

09:29AM 7 THE WITNESS: MY NAME IS PATRICK MENDENHALL, THAT'S

09:29AM 8 P-A-T-R-I-C-K, M-E-N-D-E-N-H-A-L-L.

09:29AM 9 THE COURT: THANK YOU. COUNSEL.

09:29AM 10 MR. BOSTIC: THANK YOU, YOUR HONOR.

09:29AM 11 **DIRECT EXAMINATION**

09:29AM 12 BY MR. BOSTIC:

09:29AM 13 Q. GOOD MORNING, MR. MENDENHALL.

09:29AM 14 A. GOOD MORNING.

09:29AM 15 Q. IF YOU ARE FULLY VACCINATED, THE COURT WILL ALLOW YOU TO

09:29AM 16 TESTIFY WITHOUT A MASK.

09:29AM 17 A. I AM, THANK YOU.

09:29AM 18 Q. MR. MENDENHALL, WHAT IS YOUR PROFESSION?

09:29AM 19 A. I AM THE MANAGING PARTNER, CEO OF U.S. CAPITAL ADVISORS,

09:29AM 20 WHICH IS A WEALTH MANAGEMENT FIRM AND AN INVESTMENT BANKING

09:30AM 21 FIRM.

09:30AM 22 Q. AND WAS THERE A TIME WHEN YOU WERE AN INVESTOR IN A

09:30AM 23 COMPANY CALLED THERANOS?

09:30AM 24 A. YES.

09:30AM 25 Q. WAS ONE OF THOSE INVESTMENTS IN LATE 2013, EARLY 2014?

09:30AM 1 A. YES.

09:30AM 2 Q. HAD THERE BEEN AN EARLIER INVESTMENT IN THE COMPANY?

09:30AM 3 A. YES.

09:30AM 4 Q. AND WHAT WAS THE APPROXIMATE TIMING OF THAT INVESTMENT?

09:30AM 5 A. I BELIEVE THAT WAS IN 2005, 2006 RANGE.

09:30AM 6 Q. FOR THE 2013, 2014 INVESTMENT, WHO WAS YOUR PRIMARY

09:30AM 7 CONTACT AT THERANOS?

09:30AM 8 A. SUNNY BALWANI.

09:30AM 9 Q. I WANT TO TALK WITH YOU A LITTLE LATER ABOUT WHAT LED YOU

09:30AM 10 TO INVEST, BUT FIRST LET ME ASK YOU SOME QUESTIONS ABOUT YOUR

09:30AM 11 BACKGROUND.

09:30AM 12 CAN YOU SUMMARIZE FOR US YOUR EDUCATION, PLEASE?

09:30AM 13 A. YES. I HAVE AN UNDERGRADUATE DEGREE FROM OREGON STATE

09:30AM 14 UNIVERSITY IN GENERAL BUSINESS.

09:30AM 15 Q. AND CAN YOU GIVE US AN OVERVIEW OF YOUR WORK HISTORY

09:31AM 16 FOLLOWING OBTAINING YOUR DEGREE?

09:31AM 17 A. YES. I GRADUATED FROM OREGON STATE IN 1981.

09:31AM 18 IN 1982 I WAS HIRED BY MERRILL LYNCH IN HOUSTON, TEXAS. I

09:31AM 19 SPENT A LITTLE -- AROUND A YEAR, A LITTLE OVER A YEAR THERE.

09:31AM 20 I WENT TO A FIRM CALLED LEHMAN BROTHERS; IT WAS BOUGHT OUT

09:31AM 21 BY SHEARSON; WENT TO DREXEL; IT WAS BOUGHT OUT BY SMITH BARNEY;

09:31AM 22 AND THEN I SPENT 20 YEARS AT PAINE WEBBER AND UBS AT WHICH I

09:31AM 23 WAS A MANAGING DIRECTOR, AND I RAN THEIR THIRD LARGEST WEALTH

09:31AM 24 MANAGEMENT IN THE COMPANY.

09:31AM 25 AND ALL OF THIS WAS BASED IN HOUSTON, TEXAS.

09:31AM 1 Q. AND ARE YOU CURRENTLY BASED IN HOUSTON, TEXAS?

09:31AM 2 A. YES. WE ARE HEADQUARTERED -- U.S. CAPITAL ADVISORS, WHICH
09:31AM 3 I FOUNDED IN 2010 AFTER LEAVING UBS, IS BASED IN HOUSTON, TEXAS
09:31AM 4 WITH OFFICES IN AUSTIN AND DALLAS, TEXAS.

09:31AM 5 Q. SO YOU WERE IN THAT ROLE AT U.S. CAPITAL ADVISORS IN THE
09:31AM 6 2013, 2014 TIME PERIOD?

09:32AM 7 A. YES.

09:32AM 8 Q. YOU MENTIONED THAT YOU FIRST INVESTED IN THERANOS IN
09:32AM 9 APPROXIMATELY 2005, 2006; IS THAT RIGHT?

09:32AM 10 A. YES.

09:32AM 11 Q. HOW DID YOU FIRST HEAR ABOUT THE COMPANY?

09:32AM 12 A. I HAD ONE OF MY FINANCIAL ADVISORS WHO HAD KNOWN
09:32AM 13 ELIZABETH HOLMES'S FAMILY, AND THEY HAD BEEN COMMUNICATING AND
09:32AM 14 HE BROUGHT IT -- I HAD TO APPROVE IT AS A SUPERVISOR, AND THERE
09:32AM 15 WERE SEVERAL OF MY ADVISORS THAT WERE INVESTING IN THE EARLY
09:32AM 16 STAGE OF THERANOS.

09:32AM 17 AND WHEN IT CAME ACROSS MY DESK, I JUST THOUGHT THESE GUYS
09:32AM 18 WERE SMART GUYS, SO I WENT AND INVESTED A LITTLE BIT WITH THEM.

09:32AM 19 Q. AND WHAT WAS THE APPROXIMATE AMOUNT OF YOUR FIRST
09:32AM 20 INVESTMENT BACK THEN?

09:32AM 21 A. I BELIEVE IT WAS \$54,000 OR \$56,000, SOMETHING IN THAT
09:32AM 22 RANGE. RIGHT AROUND \$50,000, YEAH.

09:32AM 23 Q. I'M SORRY FOR TALKING OVER YOU.

09:32AM 24 YOU MENTIONED THAT THERE WAS AN ADVISOR. WAS THAT SOMEONE
09:32AM 25 WHO WORKED WITH YOU AT U.S. CAPITAL ADVISORS?

09:32AM 1 A. YES, HE CURRENTLY WORKS WITH ME AT U.S. CAPITAL ADVISORS
09:33AM 2 AS WELL.

09:33AM 3 Q. AND WHERE WERE YOU WORKING AT THE TIME?

09:33AM 4 A. WE WERE AT UBS.

09:33AM 5 Q. AND WHAT WAS THE NAME OF THAT INDIVIDUAL?

09:33AM 6 A. DAVID HARRIS.

09:33AM 7 Q. AND WAS THAT THE PERSON WHO HAD THE CONNECTION TO
09:33AM 8 MS. HOLMES'S FAMILY?

09:33AM 9 A. YES.

09:33AM 10 Q. BACK THEN AT THE TIME OF YOUR INITIAL INVESTMENT IN 2005,
09:33AM 11 2006, WHAT WAS YOUR UNDERSTANDING OF WHAT THE COMPANY WAS
09:33AM 12 DOING? WHAT KIND OF BUSINESS WAS IT?

09:33AM 13 A. INITIALLY I THOUGHT IT WAS -- I KNEW IT HAD SOMETHING TO
09:33AM 14 DO WITH BLOOD OR BLOOD DIAGNOSIS. I THOUGHT IT WAS A -- MORE
09:33AM 15 OF A REALTIME EFFICACY TECHNOLOGY THAT -- SOME SORT OF A PATCH
09:33AM 16 OR SOMETHING THAT WOULD GIVE REALTIME RESULTS AND BE TRACKED BY
09:33AM 17 DOCTORS TO MONITOR THE EFFICACY OF WHATEVER MEDICATION THEY
09:33AM 18 WERE ON.

09:33AM 19 Q. AND BACK THEN, WHERE WAS YOUR KNOWLEDGE ABOUT THERANOS
09:33AM 20 COMING FROM?

09:33AM 21 A. PROBABLY FROM DAVID HARRIS.

09:33AM 22 Q. HOW ABOUT -- SO YOU TALKED JUST NOW ABOUT WHAT KIND OF
09:34AM 23 TECHNOLOGY THE COMPANY WAS WORKING WITH.

09:34AM 24 WHAT WAS YOUR UNDERSTANDING BACK THEN ABOUT HOW FAR ALONG
09:34AM 25 THAT TECHNOLOGY WAS?

09:34AM 1 A. IT WAS VERY EARLY STAGE AT THAT TIME. I KNEW IT WAS A
09:34AM 2 VERY SPECULATIVE INVESTMENT.

09:34AM 3 Q. AND THAT'S MY NEXT QUESTION.

09:34AM 4 CAN YOU TELL US MORE ABOUT THAT? HOW DOES THE EARLY STAGE
09:34AM 5 OF THE TECHNOLOGY AFFECT YOUR VIEW OF THE KIND OF INVESTMENT?

09:34AM 6 A. YES. BASED ON THE AMOUNT OF DOLLARS THAT WE INVESTED, WE
09:34AM 7 VIEWED IT AS MORE VENTURE CAPITAL, WHICH IS EARLY STAGE, NO
09:34AM 8 EXPECTATION -- I MEAN, A GOOD IDEA, BUT NO REAL TECHNOLOGY YET
09:34AM 9 TO BACK IT UP, BUT MAYBE THE BEGINNING OF THOSE TECHNOLOGIES OR
09:34AM 10 SOME PATENTS OR SOMETHING TO BACK IT UP.

09:34AM 11 SO VERY SPECULATIVE, AGGRESSIVE INVESTMENT THAT YOU FULLY
09:34AM 12 EXPECT TO LOSE ALL OF YOUR MONEY AT THAT STAGE OF AN
09:34AM 13 INVESTMENT.

09:34AM 14 Q. LEADING UP TO THAT FIRST INVESTMENT IN 2005, 2006, DID YOU
09:34AM 15 HAVE ANY OPPORTUNITIES TO SPEAK TO ELIZABETH HOLMES?

09:35AM 16 A. I DON'T RECALL SPEAKING TO ELIZABETH HOLMES AT THAT TIME.

09:35AM 17 Q. AFTER YOU MADE THAT INVESTMENT THAT YOU SAID WAS A LITTLE
09:35AM 18 MORE THAN \$50,000 -- IS THAT RIGHT?

09:35AM 19 A. YES.

09:35AM 20 Q. AFTER YOU MADE THAT INVESTMENT, WHAT HAPPENED OVER THE
09:35AM 21 FOLLOWING YEARS? DID YOU GET MORE INFORMATION ABOUT THE
09:35AM 22 COMPANY'S ACTIVITY?

09:35AM 23 A. THERE WAS SOME SPORADIC COMMUNICATION FROM THE COMPANY,
09:35AM 24 BUT NOTHING CONCRETE AT ALL. VERY LITTLE COMMUNICATION UP
09:35AM 25 UNTIL THAT 2013 RANGE. SO, LIKE, SEVEN YEARS OF PRETTY MUCH

09:35AM 1 NOTHING.

09:35AM 2 Q. SO LET ME ASK YOU ABOUT THAT TIME PERIOD, JUST A COUPLE

09:35AM 3 MORE QUESTIONS.

09:35AM 4 WE'RE TALKING ABOUT THEN 2006 THROUGH 2012 APPROXIMATELY?

09:35AM 5 A. YES, THAT'S MY RECOLLECTION.

09:35AM 6 Q. AND DURING THAT TIME PERIOD, DO YOU RECALL GETTING ANY

09:35AM 7 UPDATES FROM THE COMPANY ABOUT THE STATE OF THE TECHNOLOGY?

09:35AM 8 A. I DON'T RECALL. THERE'S -- THERE WAS A LITTLE BIT OF

09:35AM 9 COMMUNICATION, BUT I DON'T RECALL.

09:35AM 10 Q. HOW ABOUT THE COMPANY'S BUSINESS ACTIVITY AND REVENUE?

09:36AM 11 DID YOU GET UPDATES THAT YOU REMEMBER BETWEEN 2006 AND

09:36AM 12 2012 ON THOSE TOPICS?

09:36AM 13 A. NO.

09:36AM 14 Q. GIVEN THE LACK OF INFORMATION, HOW WERE YOU FEELING ABOUT

09:36AM 15 YOUR INVESTMENT IN THERANOS TOWARDS THE END OF THAT PERIOD IN

09:36AM 16 2011 OR 2012?

09:36AM 17 A. I HAD LITERALLY, I HAD SOME OTHER -- THE MARKETS WERE

09:36AM 18 GOOD, THE REGULAR STOCK MARKET WAS DOING WELL, AND I HAD

09:36AM 19 APPROACHED MY ACCOUNTANT TO JUST WRITE IT OFF, BUT HE SUGGESTED

09:36AM 20 UNTIL I GOT FORMAL NOTICE THAT IT WAS DEAD, THEN TO JUST KEEP

09:36AM 21 IT. SO I DID.

09:36AM 22 Q. AT SOME POINT DID YOU START TO HEAR MORE INFORMATION ABOUT

09:36AM 23 THERANOS?

09:36AM 24 A. YES. THERE WAS A -- SEEMED TO BE A FLURRY OF ACTIVITY IN

09:36AM 25 THE 2013 RANGE AND HEARING SOME POSITIVE THINGS.

09:36AM 1 Q. I'D LIKE TO ASK YOU FIRST ABOUT MID-2013.

09:36AM 2 IN THE MIDDLE OF THAT YEAR, DO YOU RECALL BEING IN TOUCH

09:36AM 3 WITH MS. HOLMES ABOUT THE COMPANY?

09:36AM 4 A. I BELIEVE I WAS. I WOULD NEED TO REFRESH MYSELF, BUT I

09:37AM 5 THINK WE STARTED COMMUNICATING, OR MAYBE I TALKED TO HER FOR

09:37AM 6 THE FIRST TIME AT THE END OF 2013.

09:37AM 7 Q. AND IN THAT INITIAL CONVERSATION OR CONVERSATIONS, DO YOU

09:37AM 8 RECALL RECEIVING SIGNIFICANT ADDITIONAL INFORMATION ABOUT THE

09:37AM 9 COMPANY?

09:37AM 10 A. UM, THERE WAS -- I RECALL THAT INFORMATION WAS MORE

09:37AM 11 FORTHCOMING AT THAT TIME.

09:37AM 12 Q. IN THOSE FIRST CONVERSATIONS WITH MS. HOLMES IN 2013, DID

09:37AM 13 YOU FEEL LIKE ALL OF YOUR QUESTIONS WERE ANSWERED ABOUT WHERE

09:37AM 14 THE COMPANY'S TECHNOLOGY AND BUSINESS WERE?

09:37AM 15 A. I FELT I WAS GETTING MORE ANSWERS, YES.

09:37AM 16 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

09:37AM 17 THE COURT: YES.

09:37AM 18 MR. BOSTIC: (HANDING.)

09:38AM 19 Q. MR. MENDENHALL, I'VE HANDED YOU A BINDER OF DOCUMENTS, AND

09:38AM 20 THE COURT HAS A COPY AND SO DOES THE DEFENSE.

09:38AM 21 AND, MR. MENDENHALL, IF I COULD ASK YOU TO TURN TO 1102 IN

09:38AM 22 THE BINDER. IT SHOULD BE THE FIRST ONE.

09:38AM 23 A. YES.

09:38AM 24 Q. AND DO YOU SEE AN EMAIL IN THERE FROM THERANOS TO A NUMBER

09:38AM 25 OF INDIVIDUALS DATED SEPTEMBER 7TH, 2013?

09:38AM 1 A. YES.

09:38AM 2 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1102.

09:38AM 3 MR. CAZARES: NO OBJECTION.

09:38AM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:38AM 5 (GOVERNMENT'S EXHIBIT 1102 WAS RECEIVED IN EVIDENCE.)

09:38AM 6 BY MR. BOSTIC:

09:38AM 7 Q. MR. MENDENHALL, THAT EMAIL IS NOW ON THE SCREEN IN FRONT

09:38AM 8 OF YOU.

09:38AM 9 AND IF I COULD DIRECT YOUR ATTENTION TO -- DO YOU SEE AT

09:38AM 10 THE TOP THERE'S A LARGE BLOCK OF EMAIL ADDRESS IN THE BCC

09:38AM 11 FIELD.

09:38AM 12 DO YOU SEE THAT?

09:38AM 13 A. YES. YES, I DO.

09:38AM 14 Q. AND APPROXIMATELY TWO-THIRDS OF THE WAY DOWN THAT BLOCK

09:39AM 15 AND ON THE RIGHT SIDE, DO YOU SEE THE EMAIL ADDRESS

09:39AM 16 PMENDENHALL@USCALLC.COM?

09:39AM 17 A. YES, I DO.

09:39AM 18 Q. IS THAT YOUR EMAIL ADDRESS?

09:39AM 19 A. YES, IT IS.

09:39AM 20 Q. AND IS THIS AN EMAIL THAT YOU RECEIVED IN SEPTEMBER OF

09:39AM 21 2013?

09:39AM 22 A. YES.

09:39AM 23 Q. AND LET'S ZOOM IN ON THE BOTTOM OF THAT PAGE AND SEE SOME

09:39AM 24 OF THAT CONTENT.

09:39AM 25 AND DO YOU SEE THAT THIS EMAIL IS WRITTEN TO THE THERANOS

09:39AM 1 SHAREHOLDERS?

09:39AM 2 A. YES, IT IS.

09:39AM 3 Q. AND THE EMAIL SAYS, "I AM DELIGHTED TO SHARE THAT WE HAVE
09:39AM 4 NOW BEGUN THE COMMERCIAL LAUNCH OF THE NEW PRODUCTS AND
09:39AM 5 SERVICES WE'VE BEEN WORKING ON FOR THE PAST YEARS."

09:39AM 6 DO YOU SEE THAT?

09:39AM 7 A. YES.

09:39AM 8 Q. FIRST OF ALL, A SIMPLE QUESTION. DO YOU SEE ANYWHERE IN
09:39AM 9 THIS EMAIL, MR. MENDENHALL, A MENTION THAT THIS LAUNCH WAS ONLY
09:39AM 10 FOR FRIENDS AND FAMILY OF THERANOS?

09:39AM 11 A. IT WAS TO SHAREHOLDERS.

09:39AM 12 Q. OKAY. AND MY QUESTION IS ABOUT THE SCOPE OF THE
09:40AM 13 COMMERCIAL LAUNCH.

09:40AM 14 DO YOU SEE ANYWHERE IN THE EMAIL THE STATEMENT THAT THE
09:40AM 15 COMMERCIAL LAUNCH WAS ONLY TO FRIENDS AND FAMILY?

09:40AM 16 A. NO.

09:40AM 17 Q. DO YOU REMEMBER RECEIVING THIS EMAIL IN SEPTEMBER OF 2013?

09:40AM 18 A. I BELIEVE SO.

09:40AM 19 Q. AS AN INVESTOR, WHAT WAS YOUR REACTION TO BEING TOLD ABOUT
09:40AM 20 THE COMMERCIAL LAUNCH OF THERANOS'S PRODUCTS AND SERVICES?

09:40AM 21 A. THIS WAS GREAT NEWS.

09:40AM 22 Q. WHY SO?

09:40AM 23 A. WELL, BECAUSE I THOUGHT WE HAD NOTHING, SO IT WAS REALLY
09:40AM 24 GONE FROM SOMETHING THAT I HAD BASICALLY WAS GOING TO DISCARD
09:40AM 25 TO SOMETHING THAT WAS, WOW, THIS THING IS DOING WELL AND ALIVE.

09:40AM 1 Q. AND THIS EMAIL IN SEPTEMBER OF 2013, IS IT YOUR
09:40AM 2 RECOLLECTION THAT YOU HAD HAD CONVERSATIONS WITH MS. HOLMES
09:40AM 3 EARLIER THAT SAME YEAR?

09:40AM 4 A. I DON'T RECALL THE TIMING OF MY CONVERSATIONS WITH
09:40AM 5 MS. HOLMES, BUT I HAD COMMUNICATED WITH HER AROUND THIS TIME,
09:41AM 6 MAYBE A LITTLE BEFORE OR AFTER THIS. I JUST DON'T RECALL
09:41AM 7 SPECIFICS.

09:41AM 8 Q. OKAY. DO YOU SEE IN THE SECOND PARAGRAPH TO THIS EMAIL TO
09:41AM 9 SHAREHOLDERS THERE IS A REFERENCE TO THERANOS'S NEW WEBSITE?

09:41AM 10 A. YES, I DO.

09:41AM 11 Q. AND AROUND THIS TIME PERIOD, DID YOU VISIT THE THERANOS
09:41AM 12 WEBSITE?

09:41AM 13 A. YES, I DID.

09:41AM 14 Q. AND FOR WHAT PURPOSE DID YOU GO TO THE WEBSITE?

09:41AM 15 A. IT WAS JUST TO LEARN ABOUT WHAT THEY WERE POSTING TO THE
09:41AM 16 GENERAL PUBLIC, AND I WAS EXCITED TO LEARN AS MUCH AS I COULD.

09:41AM 17 Q. AND DO YOU SEE FOLLOWING THAT THERE'S A LINK REFERRING
09:41AM 18 SHAREHOLDERS TO A "WALL STREET JOURNAL" ARTICLE THAT WAS
09:41AM 19 PUBLISHED AROUND THAT TIME?

09:41AM 20 A. YES, I SEE THAT.

09:41AM 21 Q. I'D LIKE TO SHOW YOU EXHIBIT 1106, WHICH IS ALREADY
09:41AM 22 ADMITTED.

09:41AM 23 MAY WE PUBLISH, YOUR HONOR?

09:41AM 24 THE COURT: YES.

09:41AM 25 BY MR. BOSTIC:

09:41AM 1 Q. AND, MR. MENDENHALL, THIS IS IN YOUR BINDER AND ON THE
09:42AM 2 SCREEN.

09:42AM 3 DO YOU SEE A "WALL STREET JOURNAL" ARTICLE ENTITLED
09:42AM 4 "ELIZABETH HOLMES: THE BREAKTHROUGH OF INSTANT DIAGNOSIS"
09:42AM 5 DATED SEPTEMBER OF 2013?

09:42AM 6 A. YES.

09:42AM 7 Q. AND DO YOU REMEMBER READING THIS ARTICLE?

09:42AM 8 A. YES, I DO.

09:42AM 9 Q. I'D LIKE TO DRAW YOUR ATTENTION TO A FEW STATEMENTS HERE
09:42AM 10 ON THE FIRST PAGE IN THE FIRST INDENTED PARAGRAPH -- LET ME ASK
09:42AM 11 FIRST, PRIOR TO THIS DATE, HAD THERE BEEN MUCH PUBLIC
09:42AM 12 INFORMATION AVAILABLE ABOUT THERANOS, THE COMPANY?

09:42AM 13 A. NO.

09:42AM 14 Q. AND WAS IT SIGNIFICANT TO YOU TO SEE THIS INFORMATION IN
09:42AM 15 "THE WALL STREET JOURNAL"?

09:42AM 16 A. YES.

09:42AM 17 Q. AND WHY WAS THAT?

09:42AM 18 A. WELL, WE WERE INVESTORS, MYSELF, SOME OF MY EMPLOYEES AND
09:42AM 19 FRIENDS, AND IT WAS PRETTY EXCITING NEWS THAT THIS WAS
09:42AM 20 MATERIALIZING, OR HAD MATERIALIZED FOR THAT MATTER.

09:42AM 21 Q. OKAY. IN THE LANGUAGE ON THE SCREEN, THE ARTICLE STATES,
09:42AM 22 "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE NOW REFINING
09:43AM 23 INVOLVES DEVICES THAT AUTOMATE AND MINIATURIZE MORE THAN 1,000
09:43AM 24 LABORATORY TESTS, FROM ROUTINE BLOOD WORK TO ADVANCED GENETIC
09:43AM 25 ANALYSES."

09:43AM 1 DO YOU SEE THAT?

09:43AM 2 A. YES.

09:43AM 3 Q. AND CAN WE LOOK AT PAGE 2, AND ZOOM IN ON THE BOTTOM FEW
09:43AM 4 PARAGRAPHS THERE.

09:43AM 5 AND DO YOU SEE AT THE TOP OF THIS SELECTION THERE'S
09:43AM 6 LANGUAGE THAT SAYS, "ANOTHER THERANOS ADVANCE IS ITS TESTING'S
09:43AM 7 ACCURACY"?

09:43AM 8 A. YES, I SEE THAT.

09:43AM 9 Q. AND LET'S LOOK AT THE VERY BOTTOM OF THIS PAGE, AND YOU
09:43AM 10 SEE THERE'S A LINE THERE THAT SAYS, "THERANOS'S TECHNOLOGY IS
09:43AM 11 AUTOMATED, STANDARDIZED," AND LET'S GO TO THE NEXT PAGE, "AND
09:43AM 12 ATTEMPTS TO SUBTRACT HUMAN ERROR FROM THE PROCESS."

09:43AM 13 DO YOU SEE THAT?

09:43AM 14 A. YES.

09:43AM 15 Q. AND IT SAYS, "IT CAN THUS ACHIEVE MUCH LOWER VARIANCE
09:43AM 16 RANGES FOR A GIVEN TEST."

09:44AM 17 DID I READ THAT CORRECTLY?

09:44AM 18 A. YES.

09:44AM 19 Q. SEEING INFORMATION LIKE THIS IN THE ARTICLE, HOW DID THAT
09:44AM 20 AFFECT YOUR VIEW OF YOUR INVESTMENT IN THERANOS?

09:44AM 21 A. IT'S VERY IMPACTFUL TO NOT ONLY AN INVESTMENT, BUT MAYBE
09:44AM 22 TO EVERYBODY ON THE PLANET IF IT'S TRUE.

09:44AM 23 Q. LET ME BREAK THAT INTO TWO QUESTIONS THEN.

09:44AM 24 FIRST OF ALL, AS AN INVESTOR, WHY WAS THAT KIND OF
09:44AM 25 INFORMATION SIGNIFICANT TO YOU?

09:44AM 1 A. BECAUSE IT DIDN'T EXIST, AND IF YOU THINK ABOUT WHAT THEY
09:44AM 2 WERE -- WHAT THIS ARTICLE INDICATED THEY WERE ACCOMPLISHING, IT
09:44AM 3 WAS TRULY MIRACULOUS STUFF.

09:44AM 4 Q. AND WHY DOES THAT MATTER FOR A PERSON WHO HAS A STAKE IN
09:44AM 5 THE COMPANY?

09:44AM 6 A. BECAUSE MY STAKE IN THE COMPANY, ALBEIT A NORMAL SIZED
09:44AM 7 ALLOCATION, WOULD BE WORTH, FINANCIALLY, SIGNIFICANT DOLLARS TO
09:44AM 8 MYSELF AND MY FAMILY.

09:44AM 9 Q. SO BESIDES THE INVESTOR STANDPOINT, DID YOU ALSO HAVE A
09:44AM 10 REACTION TO THIS NEWS JUST AS A PERSON?

09:45AM 11 A. YEAH.

09:45AM 12 MR. CAZARES: OBJECTION. RELEVANCE.

09:45AM 13 THE COURT: OVERRULED.

09:45AM 14 YOU CAN ANSWER THE QUESTION.

09:45AM 15 THE WITNESS: YES, BECAUSE I THINK THAT ANYBODY WHO
09:45AM 16 HAS GONE IN AND BEEN STABBED WITH A NEEDLE WOULD APPRECIATE
09:45AM 17 JUST HAVING A LITTLE FINGER PRICK.

09:45AM 18 SO IT WAS, IT WAS PSYCHOLOGICALLY AND FOR MOST AMERICAN --
09:45AM 19 PEOPLE AROUND THE WORLD, IT WAS GLOBALLY IMPACTFUL, AND IT WAS
09:45AM 20 REVOLUTIONARY.

09:45AM 21 BY MR. BOSTIC:

09:45AM 22 Q. AND WERE STATEMENTS SPECIFICALLY ABOUT THE NUMBER OF TESTS
09:45AM 23 THAT COULD BE PERFORMED AND THE ACCURACY OF THE TESTS MATERIAL
09:45AM 24 TO YOU AS AN INVESTOR?

09:45AM 25 A. YES. I DID NOT KNOW THAT YOU COULD RUN 1,000 TESTS ON

09:45AM 1 BLOOD. I DIDN'T KNOW THERE WAS ANY SUCH THING, SO -- BUT THEY
09:45AM 2 DID SAY GENETIC TESTING AND THINGS LIKE THAT.

09:45AM 3 SO I HAD NO KNOWLEDGE, BUT 1,000 TESTS, PRETTY WILD, YOU
09:45AM 4 KNOW.

09:45AM 5 Q. YOU MENTIONED THAT YOU VIEWED THE THERANOS WEBSITE AROUND
09:45AM 6 THIS TIME; IS THAT RIGHT?

09:45AM 7 A. YES.

09:45AM 8 Q. AND IF I COULD ASK YOU TO TURN TO TAB 5805.

09:46AM 9 YOUR HONOR, THIS EXHIBIT IS ALSO ADMITTED. MAY WE
09:46AM 10 DISPLAY?

09:46AM 11 THE COURT: YES.

09:46AM 12 BY MR. BOSTIC:

09:46AM 13 Q. AND LOOKING AT 5805, DO YOU RECOGNIZE THE THERANOS
09:46AM 14 WEBSITE?

09:46AM 15 A. YES.

09:46AM 16 Q. AND IS THIS SIMILAR TO THE VERSION OF THE WEBSITE THAT YOU
09:46AM 17 REVIEWED AROUND THE TIME THAT WE'RE DISCUSSING?

09:46AM 18 A. YES, IT LOOKS LIKE THE WEBSITE.

09:46AM 19 Q. LET'S LOOK AT PAGE 2 OF THIS EXHIBIT. AND ON THE SCREEN,
09:46AM 20 LET'S ZOOM IN TO THE PORTION THAT SAYS, "A FULL RANGE OF TESTS,
09:46AM 21 A FRACTION OF THE COST."

09:46AM 22 AND DO YOU SEE THERE THERE'S LANGUAGE THAT SAYS, "WE OFFER
09:46AM 23 A FULL RANGE OF LABORATORY TESTS, FROM COMMON PANELS TO
09:46AM 24 SPECIALIZED TESTS. ALL WITH SPEED AND THE HIGHEST LEVELS OF
09:46AM 25 QUALITY."

09:46AM 1 DO YOU SEE THAT?

09:46AM 2 A. YES.

09:46AM 3 Q. AND WAS THAT INFORMATION IMPORTANT TO YOU AS SOMEONE
09:46AM 4 INVESTING IN THE COMPANY?

09:46AM 5 A. YES, VERY IMPORTANT.

09:46AM 6 Q. LET'S LOOK AT PAGE 6. LET'S ZOOM IN ON, YES,
09:47AM 7 COMPREHENSIVE TEST MENU.

09:47AM 8 AND, MR. MENDENHALL, DO YOU SEE HERE IT SAYS, "FROM COMMON
09:47AM 9 PANELS TO SPECIALIZED, THERANOS OFFERS A COMPREHENSIVE TESTING
09:47AM 10 MENU"?

09:47AM 11 A. YES.

09:47AM 12 Q. AND YOU TESTIFIED EARLIER THAT YOU CARED AS AN INVESTOR
09:47AM 13 ABOUT THE SCOPE OF THE TESTS AVAILABLE.

09:47AM 14 A. OH, ABSOLUTELY, YES.

09:47AM 15 Q. FINALLY, LET'S GO TO PAGE 22 IN THIS EXHIBIT.

09:47AM 16 AND LET'S LOOK AT THIS LANGUAGE TOWARDS THE TOP OF THE
09:47AM 17 PAGE THAT SAYS, "ONE TINY DROP. THOUSANDS OF ANSWERS."

09:47AM 18 DO YOU SEE THAT?

09:47AM 19 A. YES.

09:47AM 20 Q. AND IT SAYS, "THERANOS CAN PERFORM A FULL RANGE OF TESTS
09:47AM 21 ON SAMPLES AS SMALL AS A FEW TINY DROPS."

09:48AM 22 DO YOU SEE THAT?

09:48AM 23 A. YES.

09:48AM 24 Q. AND IT GOES ON TO SAY, "OUR ASSAYS ARE VALIDATED UNDER
09:48AM 25 FDA, ICH, AND WHO GUIDELINES. AND WE PROVIDE THE HIGHEST LEVEL

09:48AM 1 OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN BOTH OUR PRE-
09:48AM 2 AND POST-ANALYTIC PROCESSES, TO REALIZE THE HIGHEST LEVEL OF
09:48AM 3 ACCURACY AND PRECISION."

09:48AM 4 DO YOU SEE THAT?

09:48AM 5 A. YES, I DO.

09:48AM 6 Q. DO YOU RECALL SEEING THAT LANGUAGE OR SIMILAR LANGUAGE
09:48AM 7 WHEN YOU REVIEWED THE WEBSITE AROUND THE TIME OF THE LAUNCH?

09:48AM 8 A. YES.

09:48AM 9 Q. OKAY. WE CAN PUT THAT EXHIBIT ASIDE.

09:48AM 10 AROUND THIS TIME IN LATE 2013, DID YOU BECOME AWARE OF
09:48AM 11 ANOTHER CHANCE TO INVEST IN THERANOS?

09:48AM 12 A. YES, I DID.

09:48AM 13 Q. AND HOW DID YOU FIND OUT ABOUT THAT, IF YOU RECALL?

09:48AM 14 A. I THINK WE RECEIVED SOME SHAREHOLDER LETTERS AND
09:48AM 15 INFORMATION REGARDING STOCK SPLIT, CAPITAL RAISED, AND IT
09:48AM 16 LOOKED TO US -- IT LOOKED TO ME AT THE TIME THAT THEY WERE
09:49AM 17 PREPARING TO BRING IN INSTITUTIONAL CAPITAL AT THAT TIME.

09:49AM 18 I'M NOT SURE WHO THE INVESTORS WERE BESIDES MYSELF AND MY
09:49AM 19 FRIENDS UP UNTIL THAT POINT, BUT IT LOOKED LIKE THEY WERE
09:49AM 20 MAKING SOME INROADS INTO RAISING A SIGNIFICANT AMOUNT OF
09:49AM 21 CAPITAL.

09:49AM 22 Q. AND YOU USED THE TERM "INSTITUTIONAL CAPITAL." CAN YOU
09:49AM 23 BRIEFLY EXPLAIN WHAT THAT MEANS?

09:49AM 24 A. IT WOULD BE MORE SOPHISTICATED. IT COULD BE PRIVATE
09:49AM 25 EQUITY, HEDGE FUNDS, DIFFERENT CAPITAL MARKETS TYPE COMPANIES

09:49AM 1 AND ULTRA HIGH NET WORTH INDIVIDUALS. FAMILY OFFICES I SHOULD
09:49AM 2 SAY.

09:49AM 3 Q. OKAY. LET ME ASK YOU TO TURN TO 5814 IN YOUR BINDER.

09:49AM 4 DO YOU SEE THERE AN EMAIL FROM THERANOS TO YOU IN
09:49AM 5 MID-DECEMBER 2013?

09:49AM 6 A. I DO.

09:49AM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5814.

09:50AM 8 MR. CAZARES: NO OBJECTION.

09:50AM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:50AM 10 (GOVERNMENT'S EXHIBIT 5814 WAS RECEIVED IN EVIDENCE.)

09:50AM 11 BY MR. BOSTIC:

09:50AM 12 Q. AND DO YOU SEE, FIRST OF ALL, MR. MENDENHALL, AT THE TOP
09:50AM 13 THIS WAS SENT FROM THERANOS TO YOU ON DECEMBER 16TH, 2013?

09:50AM 14 A. YES, I SEE THAT.

09:50AM 15 Q. AND LET'S LOOK AT THE TEXT OF THE LETTER UNDER "THERANOS
09:50AM 16 CONFIDENTIAL."

09:50AM 17 IT SAYS, "DEAR THERANOS STOCKHOLDER."

09:50AM 18 AND DO YOU SEE AT THE TOP THERE'S LANGUAGE THAT SAYS,
09:50AM 19 "WITH OUR LAUNCH TO CONSUMER HEALTH CARE THIS YEAR, WE ARE
09:50AM 20 RAPIDLY SCALING TO ESTABLISH A NATIONAL FOOTPRINT AND CAPTURE
09:50AM 21 THE OPPORTUNITY WE HAVE TO SERVE AS THE ONLY CERTIFIED,
09:50AM 22 NATIONAL LABORATORY CAPABLE OF RUNNING ANY OF ITS LABORATORY
09:50AM 23 TESTS FROM A FEW TINY DROPLETS OF BLOOD."

09:50AM 24 DO YOU SEE THAT LANGUAGE?

09:50AM 25 A. YES, I DO.

09:50AM 1 Q. AND THIS LANGUAGE ABOUT SCALING TO ESTABLISH A NATIONAL
09:50AM 2 FOOTPRINT," WHAT DID THAT SIGNIFY TO YOU AS AN INVESTOR?

09:51AM 3 A. IT SIGNALLED TO ME THAT THEY WERE RUNNING BLOOD TESTS AND
09:51AM 4 THAT THEY NEEDED TO MANUFACTURE AND GROW SALES AND GROW
09:51AM 5 LOCATIONS AND DISTRIBUTE THEIR PRODUCT AND GET IT OUT INTO THE
09:51AM 6 MARKET TO GENERATE REVENUE AS PART OF THEIR BUSINESS PLAN.

09:51AM 7 THAT WOULD BE MY ASSUMPTION.

09:51AM 8 Q. AT THE BOTTOM OF THAT SAME PARAGRAPH IT SAYS, "AS WE
09:51AM 9 PREPARE FOR 2014 AND CLOSING YEAR END, WE ARE ACTIVELY
09:51AM 10 INVESTING IN INFRASTRUCTURE TO BUILD THIS NEW INDUSTRY WE HAVE
09:51AM 11 CREATED."

09:51AM 12 IS THAT LANGUAGE CONSISTENT WITH THE CONCEPT THAT YOU JUST
09:51AM 13 DESCRIBED?

09:51AM 14 A. YES.

09:51AM 15 Q. AROUND THIS TIME WHEN YOU FOUND OUT ABOUT THE OPPORTUNITY
09:51AM 16 TO INVEST MORE MONEY IN THERANOS, WERE YOU INTERESTED IN
09:51AM 17 POTENTIALLY PURSUING THAT?

09:51AM 18 A. YES.

09:51AM 19 Q. AND WHY WAS THAT?

09:51AM 20 A. THIS IS, AGAIN, PROBABLY THE MOST INCREDIBLE INVESTMENT
09:52AM 21 OPPORTUNITY THAT ONE COULD SEE, AND IF YOU -- WHEN I DID JUST
09:52AM 22 BACK OF THE ENVELOPE MATH ON MY OWN, I THOUGHT, WOW, THIS THING
09:52AM 23 COULD REALLY BE A SIGNIFICANT OPPORTUNITY FOR INVESTORS LIKE
09:52AM 24 MYSELF.

09:52AM 25 Q. AND WHAT WAS THE NEXT STEP THEN? GIVEN THAT YOU WERE

09:52AM 1 INTERESTED IN POTENTIALLY PURSUING IT, WHAT DID YOU DO NEXT?

09:52AM 2 A. I'M NOT SURE EXACTLY WHAT I DID, BUT THERE WAS SOME
09:52AM 3 OFFERING DOCUMENTS AND SOME MORE INFORMATION THAT CAME MY WAY
09:52AM 4 TO MAKE A DECISION.

09:52AM 5 Q. DID YOU HAVE A CONVERSATION WITH MR. BALWANI IN DECEMBER
09:52AM 6 OF 2013 WHILE YOU WERE DECIDING WHETHER TO INVEST MORE?

09:52AM 7 A. I DID.

09:52AM 8 Q. IF I COULD ASK YOU TO LOOK AT TAB 5825.

09:53AM 9 AND DO YOU SEE AT 5825 AN EMAIL CHAIN BETWEEN YOU AND
09:53AM 10 MR. BALWANI IN THIS TIME PERIOD?

09:53AM 11 A. I DO.

09:53AM 12 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5825.

09:53AM 13 MR. CAZARES: NO OBJECTION.

09:53AM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:53AM 15 (GOVERNMENT'S EXHIBIT 5825 WAS RECEIVED IN EVIDENCE.)

09:53AM 16 BY MR. BOSTIC:

09:53AM 17 Q. OKAY. LET'S ZOOM IN ON MR. BALWANI'S MESSAGE TO YOU.

09:53AM 18 DO YOU SEE THAT WE'RE LOOKING AT AN EMAIL FROM
09:53AM 19 DECEMBER 19TH, 2013?

09:53AM 20 A. YES.

09:53AM 21 Q. AND MR. BALWANI WRITES, "DEAR PAT.

09:53AM 22 "HOPE THIS EMAIL FINDS YOU WELL.

09:53AM 23 "I WAS INSTRUCTED BY ELIZABETH HOLMES, OUR CEO, TO REACH
09:53AM 24 OUT TO YOU IN REGARDS TO YOUR INTEREST IN PARTICIPATING IN THE
09:53AM 25 CURRENT ROUND OF EQUITY FINANCING FOR THE COMPANY."

09:53AM 1 DO YOU SEE THAT?

09:53AM 2 A. YES.

09:53AM 3 Q. AND DO YOU REMEMBER ANY CONVERSATIONS YOU HAD WITH

09:53AM 4 MS. HOLMES LEADING UP TO MR. BALWANI EMAILING YOU?

09:53AM 5 A. YES. I REMEMBER I DID TALK TO HER AND SHE SAID SHE WOULD

09:53AM 6 CONNECT ME WITH SUNNY AND HE WOULD ANSWER ALL OF THE QUESTIONS

09:54AM 7 THAT I WOULD HAVE ABOUT THE OFFERING AND THE BUSINESS AND THE

09:54AM 8 CURRENT STATUS OF THE BUSINESS.

09:54AM 9 Q. WAS THAT MS. HOLMES'S IDEA TO CONNECT YOU WITH

09:54AM 10 MR. BALWANI, OR WAS IT IN RESPONSE TO QUESTIONS THAT YOU HAD

09:54AM 11 ABOUT THE COMPANY?

09:54AM 12 A. IT WAS HER RESPONSE TO QUESTIONS THAT I HAD ABOUT THE

09:54AM 13 COMPANY.

09:54AM 14 Q. DID SHE ALSO PROVIDE ANSWERS TO THOSE QUESTIONS, OR WAS

09:54AM 15 PUTTING YOU IN TOUCH WITH MR. BALWANI IN LIEU OF PROVIDING

09:54AM 16 THOSE ANSWERS HERSELF?

09:54AM 17 A. MY RECOLLECTION IS THAT WE HAD A GENERAL CONVERSATION AND

09:54AM 18 I HAD A LOT OF SPECIFIC DETAILS THAT I WANTED, SO THIS WAS HER

09:54AM 19 ANSWER WAS TO CONNECT ME WITH MR. BALWANI.

09:54AM 20 Q. AND DID YOU HAVE AN UNDERSTANDING AT THAT TIME ABOUT

09:54AM 21 MR. BALWANI'S ROLE IN THE COMPANY?

09:54AM 22 A. YES. AT THE TIME, HE WAS IDENTIFIED AS THE PRESIDENT AND

09:54AM 23 CHIEF OPERATING OFFICER OF THE COMPANY.

09:54AM 24 Q. IN MR. BALWANI'S EMAIL HE SAID, "PLEASE ADVISE WHEN IS A

09:55AM 25 GOOD TIME TO CHAT," AND OFFERED TO CONNECT WITH YOU TO ANSWER

09:55AM 1 THOSE QUESTIONS.

09:55AM 2 DO YOU SEE THAT?

09:55AM 3 A. YES.

09:55AM 4 Q. AND DID YOU HAVE A CONVERSATION WITH MR. BALWANI SHORTLY
09:55AM 5 AFTER THIS?

09:55AM 6 A. YES, I DID.

09:55AM 7 Q. LET ME ASK YOU TO LOOK AT TAB 4059, PLEASE.

09:55AM 8 A. OKAY.

09:55AM 9 Q. DO YOU HAVE 4059?

09:55AM 10 A. YES, I DO.

09:55AM 11 Q. AND IS THAT AN EMAIL FROM YOU TO YOUR COWORKER,
09:55AM 12 DAVID HARRIS, ON DECEMBER 2ND, 2013?

09:56AM 13 A. I SEEM TO -- OH, I HAVE IT. THERE IT IS.

09:56AM 14 Q. AND I DON'T WANT YOU TO READ ANY OF THE CONTENT OUT LOUD,
09:56AM 15 BUT COULD YOU JUST TELL US WHAT THE EMAIL WAS AND WHAT WAS THE
09:56AM 16 PURPOSE OF YOU SENDING IT?

09:56AM 17 A. THIS EMAIL WAS A COMPLETE RECAP OF MY CONVERSATION WITH
09:56AM 18 MR. BALWANI ON THAT DAY.

09:56AM 19 Q. AND WHAT WAS THE PURPOSE OF YOU SENDING THAT RECAP TO YOUR
09:56AM 20 COWORKER, DAVID HARRIS?

09:56AM 21 A. DAVID WAS -- HAD INTRODUCED SEVERAL OF OUR CLIENTS, WELL,
09:56AM 22 BACK AT UBS, TO THIS INVESTMENT, AND IT -- SOME OF THESE
09:56AM 23 CLIENTS WERE SHAREHOLDERS IN MY COMPANY AND SOME OF THESE
09:56AM 24 CLIENTS WERE CLIENTS OF MY CURRENT FIRM, U.S. CAPITAL ADVISORS,
09:56AM 25 SO I WANTED TO PASS ON THE CURRENT UPDATE ON -- FOR THE

09:56AM 1 INVESTORS.

09:56AM 2 Q. AND WAS THAT PART OF YOUR USUAL PRACTICE AT U.S. CAPITAL
09:57AM 3 ADVISORS, TO SEND UPDATES LIKE THIS TO PEOPLE LIKE MR. HARRIS?

09:57AM 4 A. YES.

09:57AM 5 Q. AND WAS IT PART OF YOUR REGULAR PRACTICE AT U.S. CAPITAL
09:57AM 6 ADVISORS TO HAVE CALLS OR CONVERSATIONS WITH PEOPLE
09:57AM 7 REPRESENTING THE COMPANIES YOU WERE CONSIDERING INVESTING IN?

09:57AM 8 A. YES, COMPANIES THAT WE HAD INVESTED IN, AND THAT CERTAINLY
09:57AM 9 WHEN WE'RE CONSIDERING AN INVESTMENT, WE HAVE THESE TYPES OF
09:57AM 10 CALLS.

09:57AM 11 Q. AND AROUND THAT TIME PERIOD AT U.S. CAPITAL ADVISORS, DID
09:57AM 12 YOU HAVE A SPECIFIC PRACTICE WHEN IT CAME TO TAKING NOTES OF
09:57AM 13 THOSE CONVERSATIONS, MEMORIALIZING THOSE NOTES?

09:57AM 14 A. I'M, I'M A HABITUAL NOTE-TAKER, ESPECIALLY AS I GET OLDER,
09:57AM 15 AND, YES, I TAKE NOTES ALL OF THE TIME.

09:57AM 16 Q. AND DESCRIBE FOR US WHAT YOUR USUAL PRACTICE WAS BETWEEN
09:57AM 17 THE CONTENT OF THE CALL AND SENDING AN EMAIL LIKE THIS?

09:57AM 18 A. I JOT DOWN THE NOTES FROM THE CONVERSATION, AND THEN I
09:57AM 19 TRANSLATE THEM INTO AN EMAIL OR A WORD DOCUMENT SO PEOPLE CAN
09:58AM 20 UNDERSTAND MY NOTES AND I CAN DETAIL MY NOTES AND WHAT MY
09:58AM 21 TAKEAWAYS WERE FROM THE CONVERSATION, AND I'M VERY DETAILED AND
09:58AM 22 SPECIFIC IN THAT.

09:58AM 23 Q. AND IN DOING THAT WITH YOUR CALL WITH MR. BALWANI, DID YOU
09:58AM 24 CREATE THIS RECORD SHORTLY AFTER THE CALL?

09:58AM 25 A. I BELIEVE I LITERALLY HUNG UP AND THEN WITHIN A SHORT

09:58AM 1 PERIOD OF TIME I -- THAT DAY I STARTED TYPING OUT MY NOTES.

09:58AM 2 Q. AND WAS IT IMPORTANT FOR YOU TO BE ACCURATE IN RELAYING
09:58AM 3 THIS INFORMATION TO MR. HARRIS?

09:58AM 4 A. YES.

09:58AM 5 Q. AND WAS THIS EMAIL AND WERE EMAILS LIKE IT PRESERVED SO
09:58AM 6 THAT THEY COULD BE REFERENCED LATER IF NEEDED?

09:58AM 7 A. YES. REGULATORILY WE PRESERVE OUR EMAILS FOR SIX YEARS,
09:58AM 8 NO MATTER WHAT I DO. SO EVERYTHING THAT I WRITE IS PRESERVED
09:58AM 9 REGULLATORILY FOR UP TO SIX YEARS, I BELIEVE.

09:58AM 10 MR. BOSTIC: OKAY. YOUR HONOR, THE GOVERNMENT
09:58AM 11 OFFERS 5059 -- EXCUSE ME, 4059.

09:59AM 12 MR. CAZARES: 802, YOUR HONOR.

09:59AM 13 THE COURT: IS THIS 803(6)?

09:59AM 14 MR. BOSTIC: YES, YOUR HONOR.

09:59AM 15 THE COURT: AND COULD YOU JUST INQUIRE, WAS -- AND
09:59AM 16 I'M NOT SURE I HEARD IT, MAYBE YOU DID -- BUT WHETHER OR NOT
09:59AM 17 HIS PROTOCOL WAS SOMETHING THAT WAS IN THE NORMAL COURSE AND
09:59AM 18 SCOPE OF HOW HE RAN THE BUSINESS.

09:59AM 19 MR. BOSTIC: YES, YOUR HONOR.

09:59AM 20 THE COURT: THAT PIECE OF IT, IF YOU COULD.

09:59AM 21 MR. BOSTIC: YES, YOUR HONOR.

09:59AM 22 Q. MR. MENDENHALL, WHAT WAS YOUR ROLE AT U.S. CAPITAL
09:59AM 23 ADVISORS AT THIS TIME IN 2013?

09:59AM 24 A. IT'S THE SAME ROLE. I'M THE FOUNDER AND MANAGING PARTNER
09:59AM 25 AND CEO OF THE FIRM.

09:59AM 1 Q. OKAY. AND THE SEQUENCE THAT YOU JUST DESCRIBED WHERE YOU
09:59AM 2 WOULD TAKE NOTES OF A CALL, TRANSCRIBE THOSE NOTES, AND THEN
09:59AM 3 EMAIL THE RECAPS TO OTHER INDIVIDUALS AT U.S. CAPITAL THAT
09:59AM 4 NEEDED THAT INFORMATION, WAS THAT PART OF YOUR STANDARD
09:59AM 5 PRACTICE AND THE WAY THAT YOU OPERATED THE BUSINESS AT THAT
09:59AM 6 TIME?

09:59AM 7 A. YES, IT'S -- IT'S THE STANDARD PRACTICE ON HOW I DEAL NOT
09:59AM 8 ONLY WITH EMPLOYEE/EMPLOYER MATTERS, BUT WITH INVESTMENT AND
09:59AM 9 INVESTMENT MATTERS, INCLUDING CLIENTS OF THE FIRM.

10:00AM 10 WHEN I AM COMMUNICATING -- THIS WOULD BE SIMILAR TO A
10:00AM 11 COMMUNICATION THAT I KNEW WAS GOING TO GO TO CLIENTS OF THE
10:00AM 12 FIRM, ALTHOUGH THE FIRM HAD NOT -- WASN'T ASSOCIATED WITH
10:00AM 13 RAISING THE CAPITAL FOR THERANOS, I KNEW OUR SHAREHOLDERS HAD
10:00AM 14 OWNERSHIP OF THAT.

10:00AM 15 SO I KNEW THIS WAS GOING TO SHAREHOLDERS, SO I TREATED IT
10:00AM 16 AS SUCH, SHAREHOLDERS OF THERANOS AND CLIENTS OF THE FIRM.

10:00AM 17 Q. OKAY. THANK YOU.

10:00AM 18 YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 4059.

10:00AM 19 THE COURT: IT'S ADMITTED PURSUANT TO 803(6).

10:00AM 20 MR. BOSTIC: MAY I PUBLISH, YOUR HONOR?

10:00AM 21 THE COURT: YES, YOU MAY PUBLISH.

10:00AM 22 (GOVERNMENT'S EXHIBIT 4059 WAS RECEIVED IN EVIDENCE.)

10:00AM 23 MR. BOSTIC: LET'S ZOOM IN ON THE TOP THIRD OF THE
10:00AM 24 PAGE OR SO.

10:00AM 25 Q. AND SO, MR. MENDENHALL, CAN YOU TELL US ONE MORE TIME WHAT

10:00AM 1 WE'RE LOOKING AT HERE, THIS EMAIL FROM DECEMBER 22ND, 2013.

10:00AM 2 A. THIS IS A RECAP OF MY CONVERSATION WITH MR. BALWANI

10:00AM 3 SUMMARIZING THE FACTS AS HE GAVE THEM TO ME AND SENDING THEM TO

10:00AM 4 ONE OF MY EMPLOYEES, DAVID HARRIS, AND SOME OF HIS CLIENTS WHO

10:01AM 5 ARE ALSO CLIENTS OF U.S. CAPITAL.

10:01AM 6 Q. AND BESIDES THE -- WELL, LET'S LOOK BRIEFLY AT PAGE 2 OF

10:01AM 7 THIS DOCUMENT, AND LET'S ZOOM IN ON WHAT YOU WRITE AFTER YOU

10:01AM 8 SIGN OFF FROM THE EMAIL.

10:01AM 9 DO YOU SEE THERE THERE'S LANGUAGE THAT SAYS, "I

10:01AM 10 TRANSCRIBED THIS EMAIL FROM MY NOTES AND I AM CONFIDENT I DID

10:01AM 11 SO ACCURATELY"?

10:01AM 12 DO YOU SEE THAT?

10:01AM 13 A. YES.

10:01AM 14 Q. WAS THAT TRUE?

10:01AM 15 A. YES.

10:01AM 16 Q. LET'S GO BACK TO PAGE 1 AND ZOOM IN ON THAT TOP PORTION

10:01AM 17 AGAIN.

10:01AM 18 THIS CALL WITH MR. BALWANI, WHAT WAS ITS PURPOSE IN

10:01AM 19 DECEMBER OF 2013?

10:01AM 20 A. THE PURPOSE WAS WE HAD AN OPPORTUNITY AS CURRENT

10:01AM 21 SHAREHOLDERS TO ADD TO OUR THERANOS POSITION, AND I NEEDED TO

10:01AM 22 DETERMINE WHETHER WE WOULD DO THAT OR NOT.

10:01AM 23 Q. AND AT THIS TIME WERE YOU INVESTIGATING THE COMPANY SOLELY

10:02AM 24 FOR YOURSELF, OR DID YOU ALSO REPRESENT OTHER INVESTORS WHO

10:02AM 25 WERE CONSIDERING INVESTING?

10:02AM 1 A. I BELIEVE I WAS REPRESENTING MYSELF AND OTHER INVESTORS
10:02AM 2 THAT WERE INTERESTED IN KNOWING WHAT TO DO GOING FORWARD.

10:02AM 3 Q. AND THE INFORMATION THAT YOU GAINED FROM MR. BALWANI
10:02AM 4 DURING THIS CALL ON DECEMBER 22ND, DID YOU PASS THAT
10:02AM 5 INFORMATION ALONG TO THOSE OTHER INDIVIDUALS?

10:02AM 6 A. YES, EVENTUALLY.

10:02AM 7 WELL, SOME HERE, AND THEN MORE LATER.

10:02AM 8 Q. OKAY. BESIDES THE NOTES THAT WE'RE LOOKING AT, DO YOU
10:02AM 9 ALSO HAVE AN INDEPENDENT MEMORY OF YOUR CONVERSATION WITH
10:02AM 10 MR. BALWANI ON THAT DAY?

10:02AM 11 A. YES, I REALLY DO.

10:02AM 12 Q. OKAY. AND I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE
10:02AM 13 CONTENT OF THAT CONVERSATION AND WHAT YOU WROTE IN THE NOTES.

10:02AM 14 LET'S START WITH ITEMS 3, 4, AND 5 ON YOUR LIST.

10:02AM 15 DO YOU SEE THAT IN FRONT OF YOU?

10:02AM 16 A. YES.

10:02AM 17 Q. AND THOSE ITEMS READ, "THE 'SCIENCE' BEHIND THERANOS IS
10:03AM 18 COMPLETE;

10:03AM 19 "NO NEW 'SCIENCE' NEEDED;

10:03AM 20 "NO NEW INVENTION NEEDED."

10:03AM 21 DO YOU SEE THAT?

10:03AM 22 A. YES, I DO.

10:03AM 23 Q. AND WHAT DO YOU REMEMBER MR. BALWANI TELLING YOU ABOUT THE
10:03AM 24 STATE OF THE SCIENCE AND THE INVENTION AT THERANOS?

10:03AM 25 A. IT WAS DONE AND THERE WAS SOME SPECIFICITY AROUND OUR

10:03AM 1 CONVERSATION WHERE, KNOWING THAT THE SCIENCE AND THE INVENTION
10:03AM 2 WAS COMPLETE, THE NEW CAPITAL HAD A SPECIFIC PURPOSE, AND
10:03AM 3 THAT'S WHAT THIS CONVERSATION -- ONCE I HEARD THAT, I WAS MORE
10:03AM 4 INTERESTED IN WHAT THEY WERE GOING TO DO WITH THE MONEY SINCE
10:03AM 5 EVERYTHING WAS COMPLETE, WHICH WAS VERY EXCITING NEWS.

10:03AM 6 Q. OKAY. AND I'LL ASK YOU SHORTLY ABOUT WHAT YOU HEARD ABOUT
10:03AM 7 THE PURPOSE OF THE MONEY.

10:03AM 8 BUT FOR NOW, WHEN IT CAME TO THE STATE OF THE TECHNOLOGY,
10:03AM 9 WHY DID THAT MATTER TO YOU AS AN INVESTOR, IF IT DID?

10:03AM 10 A. THIS MEANS THAT THIS COMPANY WENT FROM BEING A SPECULATIVE
10:03AM 11 VENTURE COMPANY TO A COMPANY THAT HAD DEVELOPED AND CREATED
10:04AM 12 TECHNOLOGY THAT WORKED AND WAS IN THE -- WAS NOW A REAL
10:04AM 13 BUSINESS, AND IT WAS GOING TO -- IT WAS HAVING SUCCESS.

10:04AM 14 SO IT WENT FROM BEING SPECULATIVE AND AGGRESSIVE TO
10:04AM 15 PROBABLY A PRETTY DECENTLY CONSERVATIVE INVESTMENT WITH A LOT
10:04AM 16 OF UPSIDE.

10:04AM 17 Q. AND DOES THAT MAKE THE INVESTMENT OPPORTUNITY MORE OR LESS
10:04AM 18 ATTRACTIVE TO YOU?

10:04AM 19 A. MUCH MORE ATTRACTIVE.

10:04AM 20 Q. IF YOU'RE LOOKING AT A TECHNOLOGY COMPANY, DO YOU VIEW AN
10:04AM 21 INVESTMENT OPPORTUNITY DIFFERENTLY IF THE COMPANY HAS COMPLETE
10:04AM 22 AND FINISHED TECHNOLOGY VERSUS IF THE COMPANY IS STILL WORKING
10:04AM 23 ON DEVELOPING IT?

10:04AM 24 A. YEAH, YEAH -- YES, OF COURSE. AND AGAIN, JUST BECAUSE
10:04AM 25 THIS IS WHAT I DO FOR A LIVING, WHEN WE ALLOCATE OUR

10:04AM 1 CLIENTS' -- WE MANAGE ABOUT EIGHT AND A HALF BILLION DOLLARS AS
10:04AM 2 A FIRM, SO WHEN WE ALLOCATE OUR CLIENTS' MONEY, DEPENDING ON
10:04AM 3 HOW MUCH MONEY THEY HAVE IN THEIR INVESTMENT OBJECTIVES, YOU
10:05AM 4 WOULD BE -- YOU WOULD DO SOME AGGRESSIVE, SPECULATIVE VENTURE,
10:05AM 5 BUT YOU WOULD ALLOCATE MORE MONEY TO A COMPANY THAT WAS NOW
10:05AM 6 ESTABLISHED WITH A LOT MORE UPSIDE. IT WOULD BE CONSIDERED
10:05AM 7 MORE OF AN AGGRESSIVE GROWTH COMPANY.

10:05AM 8 IT'S NOT A VALUE COMPANY YET, WHICH IS MORE CONSERVATIVE.
10:05AM 9 IT WOULD BE CONSIDERED GOING FROM A VENTURE FIRM TO AN
10:05AM 10 AGGRESSIVE GROWTH COMPANY.

10:05AM 11 THAT WOULD BE -- YOU WOULD BE MORE MOTIVATED TO PUT MORE
10:05AM 12 MONEY IN THAT.

10:05AM 13 Q. THE STATEMENTS IN YOUR EMAIL ARE QUITE DEFINITIVE.

10:05AM 14 DO YOU SEE THOSE STATEMENTS?

10:05AM 15 A. YES.

10:05AM 16 Q. HOW DOES THAT COMPARE TO WHAT MR. BALWANI WAS TELLING YOU?
10:05AM 17 WAS THERE ADDITIONAL HEDGING OR NUANCE IN WHAT YOU HEARD FROM
10:05AM 18 HIM ON THAT DAY?

10:05AM 19 A. NO. HE WAS 100 PERCENT CONFIDENT, FACTUAL, PRECISE.

10:05AM 20 Q. WELL, LET'S LOOK NEXT AT ITEM 2 IN YOUR LIST.

10:05AM 21 AND DO YOU SEE THERE IT SAYS, "EMPLOYEE RAMP IS IN SALES
10:05AM 22 AND MANUFACTURING"?

10:05AM 23 A. YES.

10:05AM 24 Q. AND WHAT DID MR. BALWANI TELL YOU ABOUT THAT?

10:05AM 25 A. THAT THEY WERE GOING TO EXPAND IN THEIR MANUFACTURING

10:06AM 1 CAPABILITY, AND THEY WERE RAMPING UP THEIR SALES FORCE TO DRIVE
10:06AM 2 REVENUE FOR THIS NEW TECHNOLOGY.

10:06AM 3 Q. AND IF THAT MATTERED TO YOU AS AN INVESTOR, WHY DID IT?

10:06AM 4 A. BECAUSE I LIKE -- THIS IS WHAT I WOULD CALL GROWTH
10:06AM 5 CAPITAL, NOT VENTURE CAPITAL.

10:06AM 6 SO CAPITAL GOING INTO GROWTH USUALLY RESULTS IN HIGHER
10:06AM 7 REVENUE AND MORE PROFITS.

10:06AM 8 Q. LET'S LOOK AT ITEMS 6, 7, AND 8 IN YOUR NOTES OF YOUR CALL
10:06AM 9 WITH MR. BALWANI.

10:06AM 10 AND THERE IT READS, "THEY ARE COMPLETELY VERTICALLY
10:06AM 11 INTEGRATED -- THEY OWN THE LAB AND THE MANUFACTURING;

10:06AM 12 "100 PERCENT MANUFACTURING IN U.S.A. -- NO SUBCONTRACTING;

10:06AM 13 "FULLY OWNED AND PROTECTED MANUFACTURING ASSURES PRICING
10:06AM 14 AND PROFIT STABILITY."

10:06AM 15 DO YOU SEE THAT?

10:06AM 16 A. YES.

10:06AM 17 Q. AND WHAT DID MR. BALWANI TELL YOU ABOUT THIS TOPIC?

10:07AM 18 A. THAT THESE WERE -- HE TOLD ME THESE THINGS SPECIFICALLY,
10:07AM 19 BUT THE CONVERSATION AROUND THAT IS THAT IF YOU CONTROL THAT,
10:07AM 20 THEN YOU'RE NOT AT THE MERCY OF YOUR SUPPLIERS.

10:07AM 21 A LOT OF THAT EXAMPLE IS GOING ON TODAY IN THE MARKETS
10:07AM 22 WITH SUPPLY CHAIN ISSUES FOR PUBLIC COMPANIES THAT ARE ALWAYS
10:07AM 23 COMPLAINING THEY DON'T ACCESS TO THIS THIS. THIS ALLEVIATES
10:07AM 24 THOSE POTENTIAL THREATS TO YOUR BUSINESS AND INTERRUPTION TO
10:07AM 25 YOUR BUSINESS.

10:07AM 1 Q. AND TALKING ABOUT MANUFACTURING, FROM YOUR CONVERSATION
10:07AM 2 WITH MR. BALWANI, WHAT DID YOU UNDERSTAND WAS ACTUALLY BEING
10:07AM 3 MANUFACTURED BY THERANOS?

10:07AM 4 A. I BELIEVE THEY WERE MANUFACTURING THIS DIAGNOSTIC MACHINE.
10:07AM 5 IT MIGHT HAVE BEEN THE EDISON MACHINE. I DON'T KNOW IF IT HAD
10:07AM 6 A NAME YET.

10:07AM 7 AND THEY WERE ALSO MANUFACTURING THE LITTLE NANO
10:07AM 8 CONTAINERS.

10:07AM 9 Q. DID THE FACT THAT THERANOS WAS MANUFACTURING ITS OWN
10:07AM 10 ANALYZER MAKE THE INVESTMENT MORE OR LESS ATTRACTIVE TO YOU?

10:08AM 11 A. AGAIN, IT MAKES IT MORE ATTRACTIVE.

10:08AM 12 Q. AT ANY POINT DURING THAT CALL, DID MR. BALWANI TELL YOU
10:08AM 13 THAT THERANOS WAS DEPENDENT ON THIRD PARTY ANALYZERS FOR THE
10:08AM 14 MAJORITY OF ITS TESTS?

10:08AM 15 A. NO.

10:08AM 16 Q. WOULD THAT FACT HAVE BEEN IMPORTANT TO YOU AS SOMEONE
10:08AM 17 CONSIDERING AN INVESTMENT IN THE COMPANY?

10:08AM 18 A. EXTREMELY IMPORTANT.

10:08AM 19 Q. WHY IS THAT?

10:08AM 20 A. WHY WOULD -- IF YOUR SCIENCE WORKS AND YOU DON'T NEED
10:08AM 21 TECHNOLOGY AND THIS IS WORKING, WHY WOULD YOU NEED TO USE THIRD
10:08AM 22 PARTY BIG VEIN DRAWS WHEN YOUR WHOLE PREMISE IS SMALL FINGERTIP
10:08AM 23 DROPS OF BLOOD?

10:08AM 24 WHY IS IT -- IS THIS A TEMPORARY THING? IS IT A PERMANENT
10:08AM 25 THING?

10:08AM 1 THERE WOULD HAVE BEEN A LOT OF QUESTIONS I WOULD HAVE HAD
10:08AM 2 TO ASK AND IT WOULD HAVE DIALLED DOWN THE MONEY THAT I WOULD
10:08AM 3 HAVE BEEN INTERESTED IN INVESTING IF THEY STILL RELYING ON -- I
10:08AM 4 DIDN'T KNOW THEY EVER USED ANOTHER TEST.

10:08AM 5 Q. AND BECAUSE YOU MENTIONED VEIN DRAWS, LET ME ASK, DURING
10:08AM 6 THAT CONVERSATION, DID MR. BALWANI EVER TELL YOU THAT THE
10:08AM 7 COMPANY NEEDED TO RELY ON VEIN DRAWS FOR A SIGNIFICANT
10:09AM 8 PERCENTAGE OF ITS TESTS?

10:09AM 9 A. NO.

10:09AM 10 Q. WOULD THAT HAVE BEEN AN IMPORTANT FACT FOR YOU TO KNOW?

10:09AM 11 A. YES.

10:09AM 12 Q. THOSE FACTS ABOUT THE USE OF THIRD PARTY DEVICES OR VEIN
10:09AM 13 DRAWS, DID MR. BALWANI EVER DISCLOSE THOSE FACTS TO YOU DURING
10:09AM 14 YOUR DEALINGS WITH THE COMPANY?

10:09AM 15 A. NO.

10:09AM 16 Q. OKAY. LET'S ZOOM OUT AND ZOOM BACK IN TO ITEM 12 AND
10:09AM 17 BELOW.

10:09AM 18 AND DO YOU SEE THAT ITEM 12 ON YOUR LIST YOU REPORT,
10:09AM 19 "CURRENT CLINICAL TRIALS TAKE 6 VIALS AND CAN RUN 10 TO 12
10:09AM 20 TESTS. THERANOS TAKES 3 DROPS AND CAN RUN 60 TO 70 TESTS."

10:09AM 21 DO YOU SEE THAT?

10:09AM 22 A. YES.

10:09AM 23 Q. AND WHAT DID MR. BALWANI TELL YOU ABOUT THE NUMBER OF
10:09AM 24 TESTS THAT THERANOS COULD RUN ON A SINGLE SAMPLE?

10:09AM 25 A. EXACTLY WHAT I WROTE.

10:09AM 1 Q. OKAY. AND THE DIFFERENCE IN THIS REGARD IN ABILITY
10:10AM 2 BETWEEN THERANOS AND CURRENT CLINICAL TRIALS, DID THAT MATTER
10:10AM 3 TO YOU AS AN INVESTOR?

10:10AM 4 A. YES, VERY MUCH SO.

10:10AM 5 Q. LOOKING AT 17, YOU RELAY THAT YOU HEARD "THE COMPETITION
10:10AM 6 IS YEARS BEHIND ON TECHNOLOGY (MAYBE LONGER) AND WITH BLOATED
10:10AM 7 OVERHEADS AND BUREAUCRACY WOULD HAVE TO CHARGE THE SAME RATES
10:10AM 8 THEY CURRENTLY CHARGE OR HIGHER THEREFORE MAKING THEIR ABILITY
10:10AM 9 TO COMPETE LET ALONE CATCH UP VERY DIFFICULT IF NOT
10:10AM 10 IMPOSSIBLE."

10:10AM 11 IS THAT SOMETHING THAT YOU HEARD FROM MR. BALWANI?

10:10AM 12 A. YES.

10:10AM 13 Q. AND IN CONNECTION WITH DISCUSSING THE COMPETITION, DID
10:10AM 14 MR. BALWANI TELL YOU ABOUT THERANOS'S USE OF COMMERCIALY
10:10AM 15 AVAILABLE ANALYZERS?

10:10AM 16 A. NO.

10:10AM 17 Q. LOOKING AT 21, THERE'S MENTION OF WHAT YOU HEARD ABOUT
10:10AM 18 PRICING.

10:10AM 19 DO YOU SEE THAT?

10:10AM 20 A. YES.

10:10AM 21 Q. AND IT SAYS, "THEIR PRICING COULD HAVE BEEN SIGNIFICANTLY
10:10AM 22 HIGHER BUT THEY DESIGNED IT TO BE PROFITABLE, EFFECTIVE, AND
10:10AM 23 DISRUPTIVE TO THE STATUS QUO. IT IS ALL DESIGNED TO CRUSH THE
10:10AM 24 COMPETITION WHILE REVOLUTIONIZING THE HEALTH CARE INDUSTRY."

10:11AM 25 DO YOU SEE THAT?

10:11AM 1

A. YES.

10:11AM 2

Q. AND I WANT TO FOCUS ON THAT WORD "PROFITABLE."

10:11AM 3

WHAT, IF ANYTHING, DID MR. BALWANI TELL YOU ABOUT PRICING
AND PROFITABILITY AT THERANOS?

10:11AM 4

10:11AM 5

A. I BELIEVE HE SAID THAT THEY WERE FULLY SELF-FUNDING AT

10:11AM 6

THIS POINT AND THAT THEY WERE EARNING ENOUGH MONEY TO PAY THEIR

10:11AM 7

OWN OPERATIONS, AND THAT THIS MONEY WAS JUST TO EXPAND THAT

10:11AM 8

WITH MORE RAPIDITY OR FASTER, AND THAT THEY WERE FREE CASH

10:11AM 9

FLOWING, OR CASH FLOWING THEIR OWN BUSINESSES AT THIS TIME.

10:11AM 10

Q. AND FROM STATEMENTS LIKE THIS, WAS IT YOUR UNDERSTANDING

10:11AM 11

THAT THAT PROFITABILITY CAME FROM THE PRICING THAT THERANOS WAS

10:11AM 12

OFFERING ITS TESTS AT?

10:11AM 13

A. YES.

10:11AM 14

Q. LET'S LOOK AT SOME MORE INFORMATION THAT YOU OBTAINED

10:11AM 15

ABOUT THE FINANCIALS.

10:11AM 16

IF WE ZOOM IN ON THE BOTTOM OF THIS PAGE.

10:11AM 17

AND DO YOU SEE THERE UNDER ITEM 1 OF THIS NEW LIST IT

10:11AM 18

SAYS, "THEY PREFER TO KEEP THE COMPETITION GUESSING AS TO HOW

10:12AM 19

MUCH MONEY THEY HAVE AND WHAT THEIR CURRENT REVENUE, PROFIT

10:12AM 20

MARGINS, REVENUES SOURCES, ET CETERA, ARE."

10:12AM 21

DO YOU SEE THAT?

10:12AM 22

A. YES.

10:12AM 23

Q. AND TELL US ABOUT THIS PART OF THE CONVERSATION. WAS THAT

10:12AM 24

INFORMATION FROM MR. BALWANI IN RESPONSE TO A QUESTION FROM

10:12AM 25

YOU?

10:12AM 1 A. YES. A STANDARD PART OF OUR INVESTING IN ANY COMPANY
10:12AM 2 WOULD BE TO REVIEW FINANCIALS, AUDITED FINANCIALS.

10:12AM 3 THERE WAS SECRECY AROUND THIS COMPANY FROM THE VERY
10:12AM 4 BEGINNING, AND WHEN ASKED, THIS IS WHAT THE RESPONSE WAS TO MY
10:12AM 5 REQUEST FOR FINANCIALS.

10:12AM 6 Q. SO DURING THE CALL, AM I UNDERSTANDING CORRECTLY THAT YOU
10:12AM 7 ASKED MR. BALWANI FOR FINANCIAL RECORDS OF THE COMPANY?

10:12AM 8 A. I AM -- YES. I DON'T RECALL IN THIS SPECIFIC CALL. I
10:12AM 9 ASKED ABOUT HOW THEY WERE DOING, IT WAS JUST, GIVE ME A HIGH
10:12AM 10 LEVEL REVENUE, PROFITABILITY, CASH, BALANCES. JUST COMMON
10:13AM 11 BASIC THINGS THAT ONE MIGHT REQUIRE PRIOR TO INVESTING.

10:13AM 12 AND THIS WAS THE RESPONSE.

10:13AM 13 Q. BESIDES THIS, WERE YOU GIVEN ANY INFORMATION, EVEN THAT
10:13AM 14 HIGH LEVEL INFORMATION, ABOUT THE COMPANY'S FINANCIAL
10:13AM 15 PERFORMANCE?

10:13AM 16 A. NO, OTHER THAN THEY WERE -- WELL, I DON'T WANT TO --

10:13AM 17 Q. OTHER THAN?

10:13AM 18 A. I DON'T WANT TO READ DOWN MY OWN EMAIL, SO YEAH.

10:13AM 19 Q. WELL, LET'S GO THERE THEN. LET'S LOOK AT ITEMS 2 AND 3 ON
10:13AM 20 THIS LIST HERE.

10:13AM 21 YOU RELAY IN THIS EMAIL, "THEY CAN FUND GROWTH THROUGH
10:13AM 22 CURRENT OPERATIONS -- NO NEED FOR CAPITAL."

10:13AM 23 AND THEN NUMBER 3 SAYS, "THEY ARE RAISING MONEY ONLY TO
10:13AM 24 RAPIDLY ACCELERATE THE BUSINESS."

10:13AM 25 DO YOU SEE THAT?

10:13AM 1

A. YES.

10:13AM 2

Q. AND WHAT DID MR. BALWANI TELL YOU ABOUT THAT TOPIC?

10:13AM 3

A. THAT THEY WERE SELF-FUNDING NOW, AND THEIR CURRENT

10:13AM 4

OPERATIONS WERE GROWING. THEY WERE DOING CLINICAL TRIALS AND

10:13AM 5

GETTING PAID TO DO CLINICAL TRIALS AND RUNNING TESTS, AND THAT

10:13AM 6

THEY WERE JUST RAISING THIS ROUND OF CAPITAL TO GROW THEIR

10:14AM 7

BUSINESS.

10:14AM 8

Q. AND DOES THAT MATTER TO YOU AS AN INVESTOR, HEARING THAT

10:14AM 9

ABOUT THE COMPANY'S FINANCIAL STATUS?

10:14AM 10

A. OH, INCREDIBLY.

10:14AM 11

Q. WHY?

10:14AM 12

A. I MEAN, IT'S VERY IMPRESSIVE IF YOU'RE ALREADY

10:14AM 13

SELF-FUNDING AT THIS STAGE AND THE MONEY IS GOING PURELY TO

10:14AM 14

HIRE PEOPLE TO GROW YOUR REVENUE AND MANUFACTURE YOUR PRODUCT.

10:14AM 15

THEN, AGAIN, IT MAKES IT FEEL LIKE A MORE CONSERVATIVE

10:14AM 16

INVESTMENT THAN AN AGGRESSIVE, SPECULATIVE INVESTMENT.

10:14AM 17

Q. AND DOES HEARING THAT MAKE THE INVESTMENT OPPORTUNITY MORE

10:14AM 18

OR LESS ATTRACTIVE TO YOU?

10:14AM 19

A. YEAH, MUCH MORE ATTRACTIVE.

10:14AM 20

Q. DURING THIS CONVERSATION, DID MR. BALWANI TELL YOU THAT

10:14AM 21

THE COMPANY WAS ACTUALLY DEPENDENT ON MONEY COMING IN FROM

10:14AM 22

INVESTORS IN ORDER TO CONTINUE OPERATING?

10:14AM 23

A. IT WAS THE OPPOSITE.

10:14AM 24

Q. WOULD THAT FACT HAVE BEEN IMPORTANT FOR YOU TO KNOW AS A

10:14AM 25

POTENTIAL INVESTOR?

10:14AM 1 A. YES.

10:14AM 2 Q. WOULD IT HAVE CHANGED YOUR VIEW OF THE INVESTMENT

10:14AM 3 OPPORTUNITY?

10:14AM 4 A. OH, SURE.

10:14AM 5 Q. AND DID MR. BALWANI TELL YOU AT ANY POINT DURING THAT CALL

10:15AM 6 THAT THERANOS HAD NO REVENUE GENERATING ACTIVITY WITH

10:15AM 7 PHARMACEUTICAL COMPANIES AT THIS TIME?

10:15AM 8 A. HE DID NOT TELL ME THAT.

10:15AM 9 Q. LET'S GO TO THE NEXT PAGE OF THIS EXHIBIT. LET'S LOOK AT

10:15AM 10 ITEM 13 IN THE LIST.

10:15AM 11 AND DO YOU SEE HERE THERE'S MENTION OF LIQUIDITY AND A

10:15AM 12 POTENTIAL IPO?

10:15AM 13 A. YES.

10:15AM 14 Q. AND WHAT DO YOU RECALL MR. BALWANI SAYING ABOUT THAT?

10:15AM 15 A. YOU KNOW, JUST THAT THEY KNEW THAT THE ORIGINAL

10:15AM 16 SHAREHOLDERS WERE IN FOR EIGHT YEARS AT THIS POINT, AND THAT

10:15AM 17 AROUND THE TEN YEAR MARK THEY FULLY PLANNED TO BE UP AND

10:15AM 18 RUNNING TO A DEGREE WHERE THEY COULD SUSTAIN A PUBLIC OFFERING

10:15AM 19 OR FIND OTHER SOURCES OF LIQUIDITY FOR THE EARLY INVESTORS.

10:15AM 20 Q. AND DID THAT FACT OR THAT ASSERTION MAKE THE INVESTMENT

10:16AM 21 MORE OR LESS ATTRACTIVE TO YOU?

10:16AM 22 A. YEAH. WELL, GETTING LIQUIDITY AFTER 10 YEARS IS ALWAYS

10:16AM 23 ATTRACTIVE, AND MAYBE WITHIN 24 MONTHS OF THIS POTENTIAL NEW

10:16AM 24 INVESTMENT THAT WOULD BE ATTRACTIVE AS WELL.

10:16AM 25 Q. SO WE'VE TALKED ABOUT THE SUBSTANCE OF YOUR CONVERSATION

10:16AM 1 WITH MR. BALWANI, OR SOME HIGH POINTS.

10:16AM 2 I'D LIKE TO ASK ABOUT THE TONE OF THE CONVERSATION. WHAT
10:16AM 3 WAS MR. BALWANI'S DEMEANOR DURING YOUR CONVERSATION?

10:16AM 4 A. HE WAS VERY ARTICULATE, VERY INTELLIGENT, VERY SPECIFIC,
10:16AM 5 AND I FELT LIKE HE HAD STRONG COMMAND OVER THE DETAILS.

10:16AM 6 Q. AND WHEN YOU'RE TALKING ABOUT A STRONG COMMAND OVER THE
10:16AM 7 DETAILS, DOES THAT INCLUDE THE STATE OF THE COMPANY'S
10:16AM 8 TECHNOLOGY?

10:16AM 9 A. YES.

10:16AM 10 Q. DOES IT INCLUDE THE BUSINESS ACTIVITIES OF THE COMPANY?

10:16AM 11 A. YES.

10:16AM 12 Q. DID IT INCLUDE THE FINANCIAL STATE AND PERFORMANCE OF THE
10:17AM 13 COMPANY?

10:17AM 14 A. YES.

10:17AM 15 Q. DURING THAT CALL, DID YOU FIND MR. BALWANI PERSUASIVE?

10:17AM 16 A. VERY.

10:17AM 17 Q. WHAT ABOUT HIS PRESENTATION MADE HIM PERSUASIVE?

10:17AM 18 A. THE DETAIL THAT CAME TO ME THROUGH THIS CONVERSATION WAS
10:17AM 19 SO DETAILED AND COMPELLING TO MAKE ANOTHER INVESTMENT THAT, YOU
10:17AM 20 KNOW, AND HE WAS EXTREMELY CREDIBLE. HE KNEW THE BUSINESS, AND
10:17AM 21 I FELT HE WAS -- YOU KNOW, HE WAS PRESIDENT OF THE FIRM, CHIEF
10:17AM 22 OPERATING OFFICER, SO HE KNEW EVERYTHING.

10:17AM 23 Q. AND DID YOU RELY ON THE INFORMATION THAT YOU GOT FROM
10:17AM 24 MR. BALWANI IN DECIDING WHETHER TO INVEST MORE MONEY IN
10:17AM 25 THERANOS?

10:17AM 1 A. YES.

10:17AM 2 Q. IF I COULD ASK YOU TO TURN TO THE NEXT TAB IN YOUR BINDER,

10:17AM 3 WHICH IS 4060, 4060.

10:18AM 4 A. YES.

10:18AM 5 Q. AND DO YOU SEE THAT THAT INCLUDES YOUR SAME EMAIL FROM

10:18AM 6 DECEMBER 22ND REPORTING ON YOUR CALL WITH MR. BALWANI?

10:18AM 7 A. YES.

10:18AM 8 Q. AND DO YOU SEE ABOVE THAT, THAT IT WAS FORWARDED ON?

10:18AM 9 A. YES.

10:18AM 10 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4060.

10:18AM 11 MR. CAZARES: NO OBJECTION WITH THE REDACTION THAT I

10:18AM 12 DISCUSSED WITH THE GOVERNMENT.

10:18AM 13 MR. BOSTIC: THAT REDACTION IS COMPLETE, YOUR HONOR.

10:18AM 14 THE COURT: ALL RIGHT. IT'S ADMITTED. IT MAY BE

10:18AM 15 PUBLISHED WITH REDACTIONS.

10:18AM 16 (GOVERNMENT'S EXHIBIT 4060, WITH REDACTIONS, WAS RECEIVED

10:18AM 17 IN EVIDENCE.)

10:18AM 18 BY MR. BOSTIC:

10:18AM 19 Q. MR. MENDENHALL, DO YOU SEE THAT YOUR EMAIL REPORTING ON

10:18AM 20 YOUR CALL WITH MR. BALWANI WAS FORWARDED TO DAVID HARRIS AND A

10:18AM 21 NUMBER OF PEOPLE, INCLUDING SOMEONE NAMED ALAN EISENMAN?

10:18AM 22 A. YES.

10:18AM 23 Q. AND WHO IS ALAN EISENMAN?

10:19AM 24 A. ALAN EISENMAN IS AN INVESTOR IN A COUPLE OF THINGS, AT

10:19AM 25 LEAST ONE THING THAT U.S. CAPITAL HAS DONE, AND HE'S IN

10:19AM 1 HOUSTON, AND HE'S AN INVESTOR AND HE'S A FRIEND.

10:19AM 2 Q. AND SKIPPING AHEAD IN TIME, DID MR. EISENMAN INVEST SOME
10:19AM 3 OF HIS MONEY IN THERANOS?

10:19AM 4 A. YES, I BELIEVE SO.

10:19AM 5 Q. OKAY. AND IF WE CAN PUT THAT ASIDE.

10:19AM 6 LET'S GO NEXT TO TAB 5824.

10:19AM 7 BASED ON YOUR CALL WITH MR. BALWANI AND THE OTHER
10:19AM 8 INFORMATION THAT WE HAVE TALKED ABOUT, DID YOU DECIDE THAT YOU
10:19AM 9 WANTED TO INVEST MORE MONEY IN THERANOS?

10:19AM 10 A. YES, WE DID. I DID.

10:19AM 11 Q. AND YOU SAID THAT "WE DID."

10:19AM 12 SO CAN YOU EXPLAIN WHAT GROUP WE'RE TALKING ABOUT HERE?

10:19AM 13 A. I HAD SOME FAMILY AND FRIENDS AND CLIENTS THAT WANTED TO
10:20AM 14 PULL SOME CAPITAL TOGETHER TO MAKE ANOTHER INVESTMENT.

10:20AM 15 Q. AND WAS THE DECISION TO INVEST MADE COLLECTIVELY BY YOU
10:20AM 16 AND THAT GROUP? CAN YOU EXPLAIN THAT FOR US?

10:20AM 17 A. THERE WAS -- I THINK IT WAS BASICALLY ME LEADING THAT
10:20AM 18 GROUP.

10:20AM 19 Q. AND DID YOU MAKE THAT DECISION BASED ON THE INFORMATION
10:20AM 20 THAT YOU HAD RECEIVED?

10:20AM 21 A. YES.

10:20AM 22 Q. LOOKING AT 5824, DO YOU SEE AN EMAIL CHAIN BETWEEN YOU AND
10:20AM 23 MR. BALWANI RELATING TO THAT INVESTMENT?

10:20AM 24 A. I DO.

10:20AM 25 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5824.

10:20AM 1 MR. CAZARES: NO OBJECTION.

10:20AM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:20AM 3 (GOVERNMENT'S EXHIBIT 5824 WAS RECEIVED IN EVIDENCE.)

10:20AM 4 BY MR. BOSTIC:

10:20AM 5 Q. AND LET'S START AT THE BOTTOM OF PAGE 1. WE SEE -- WE'RE

10:20AM 6 ABOUT TO LOOK AT AN EMAIL FROM MR. BALWANI ON DECEMBER 27TH.

10:21AM 7 DO YOU SEE THAT?

10:21AM 8 A. YES.

10:21AM 9 Q. AND LET'S GO TO PAGE 2.

10:21AM 10 AND DO YOU SEE THAT IN THIS EMAIL, MR. BALWANI IS SENDING

10:21AM 11 YOU THE SIGNATURE PAGE FOR INVESTMENT?

10:21AM 12 A. YES.

10:21AM 13 Q. BY THIS TIME, HAD YOU MADE THE DECISION TO INVEST MORE IN

10:21AM 14 THERANOS?

10:21AM 15 A. YES.

10:21AM 16 Q. LET'S LOOK AT PAGE 1, AND LET'S LOOK AT THE MIDDLE TWO

10:21AM 17 MESSAGES IN THE PAGE.

10:21AM 18 DO YOU SEE THAT YOU WRITE BACK ON JANUARY 9TH, A FEW DAYS

10:21AM 19 AFTER MR. BALWANI'S EMAIL?

10:21AM 20 A. YES.

10:21AM 21 Q. AND YOU WRITE THAT YOU ARE INTERESTED IN MAKING AN

10:21AM 22 INVESTMENT IF THE DEAL HASN'T CLOSED.

10:21AM 23 DO YOU SEE THAT?

10:21AM 24 A. CORRECT, YES.

10:21AM 25 Q. AND MR. BALWANI RESPONDS ABOVE THAT INDICATING THAT THE

10:21AM 1 DEAL IS STILL ACCESSIBLE AS HE SAYS?

10:21AM 2 A. YES.

10:21AM 3 Q. LET'S GO TO 5823.

10:22AM 4 AND DO YOU SEE AT 5823 IN YOUR BINDER, THERE'S A SIMILAR
10:22AM 5 EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI RELATING TO THAT
10:22AM 6 INVESTMENT?

10:22AM 7 A. YES, I DO.

10:22AM 8 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5823.

10:22AM 9 MR. CAZARES: NO OBJECTION.

10:22AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:22AM 11 (GOVERNMENT'S EXHIBIT 5823 WAS RECEIVED IN EVIDENCE.)

10:22AM 12 BY MR. BOSTIC:

10:22AM 13 Q. LET'S LOOK AT THE TOP MESSAGE HERE.

10:22AM 14 SO, MR. MENDENHALL, ARE YOU INFORMING MR. BALWANI HERE
10:22AM 15 ABOUT THE AMOUNT OF YOUR INCOMING INVESTMENT FOR THERANOS?

10:22AM 16 A. YES.

10:22AM 17 Q. AND WHAT DID THE ACTUAL AMOUNT OF YOUR INVESTMENT END UP
10:22AM 18 BEING, APPROXIMATELY?

10:22AM 19 A. IT WAS 1,300,000 AND CHANGE, I BELIEVE.

10:22AM 20 Q. AND AS PART OF THAT 1.3 MILLION, WAS YOUR PERSONAL MONEY
10:22AM 21 INCLUDED IN THAT?

10:22AM 22 A. YES.

10:22AM 23 Q. WHAT FORM DID THAT TAKE?

10:22AM 24 A. I HAD ENTITIES AND INVESTORS AND SOME EMPLOYEES AT MY FIRM
10:23AM 25 AND A BUNCH OF GROUPS, SO I PUT THE WHOLE -- I HIRED A LAWYER

10:23AM 1 AND PUT THE PARTNERSHIP TOGETHER, WHICH IS WHY IT TOOK A LITTLE
10:23AM 2 BIT LONGER, AND AGREED TO PAY FOR ALL OF THE ACCOUNTING AND
10:23AM 3 STUFF.

10:23AM 4 SO I TOOK THAT AMOUNT OF MONEY, WHICH WAS \$15,000 OR
10:23AM 5 \$20,000 IN COSTS AND FUTURE COSTS, AND I TOOK SHARES FROM THAT
10:23AM 6 AMOUNT.

10:23AM 7 Q. WAS THAT YOUR AGREEMENT WITH THE OTHER MEMBERS OF YOUR
10:23AM 8 INVESTING GROUP?

10:23AM 9 A. YES.

10:23AM 10 Q. LET'S LOOK AT 5822.

10:23AM 11 AND AT THAT TAB, DO YOU SEE ADDITIONAL CORRESPONDENCE
10:23AM 12 BETWEEN YOU AND MR. BALWANI ON THAT SAME TOPIC?

10:23AM 13 A. YES, I DO.

10:23AM 14 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5822.

10:23AM 15 MR. CAZARES: NO OBJECTION.

10:23AM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:24AM 17 (GOVERNMENT'S EXHIBIT 5822 WAS RECEIVED IN EVIDENCE.)

10:24AM 18 BY MR. BOSTIC:

10:24AM 19 Q. AND LET'S START ON PAGE 2 AT THE BOTTOM.

10:24AM 20 AND DO WE SEE HERE, MR. MENDENHALL, YOUR JANUARY 9TH EMAIL
10:24AM 21 ABOUT YOUR INTEREST IN MAKING THAT INVESTMENT IN 2014?

10:24AM 22 A. YES.

10:24AM 23 Q. AND THAT'S JANUARY 9TH.

10:24AM 24 LET'S GO TO PAGE 1 AND LOOK AT THE BOTTOM JUST BRIEFLY.

10:24AM 25 DO YOU SEE HERE WE'RE ABOUT TO LOOK AT AN EMAIL HERE FROM

10:24AM 1 MR. BALWANI TO YOU ABOUT THREE WEEKS LATER, THE END OF JANUARY?

10:24AM 2 A. YES, CORRECT.

10:24AM 3 Q. OKAY. LET'S GO TO PAGE 2 AND LOOK AT THE CONTENT OF THAT

10:24AM 4 EMAIL.

10:24AM 5 AND AT THE TOP, CAN YOU EXPLAIN WHAT MR. BALWANI IS

10:24AM 6 WRITING ABOUT HERE A FEW WEEKS AFTER YOUR INVESTMENT?

10:24AM 7 A. YES. HE -- THEY WERE RAISING -- THERE WAS AN OPPORTUNITY

10:24AM 8 TO INVEST MORE CAPITAL.

10:24AM 9 Q. SO WAS HE OFFERING YOU A CHANCE TO INVEST EVEN MORE IN

10:25AM 10 THERANOS A FEW WEEKS AFTER YOUR PREVIOUS INVESTMENT?

10:25AM 11 A. YES.

10:25AM 12 Q. LET'S LOOK AT PAGE 1, AND THE MESSAGE FROM YOU AT THE TOP

10:25AM 13 OF THE PAGE.

10:25AM 14 AND IS THIS YOUR RESPONSE TO THAT OFFER?

10:25AM 15 A. YES.

10:25AM 16 Q. YOU WRITE, "THE 1.3 PLUS MILLION I JUST INVESTED IS MONEY

10:25AM 17 I AM OWNER/TRUSTEE FOR MY KIDS ON."

10:25AM 18 DO YOU SEE THAT?

10:25AM 19 A. YES.

10:25AM 20 Q. "AND I AM COMFORTABLE WITH THE INFORMATION I HAVE RECEIVED

10:25AM 21 FROM U AND READ IN PUBLIC RECORDS IN MAKING THAT LEVEL OF

10:25AM 22 INVESTMENT."

10:25AM 23 WAS THAT TRUE AT THE TIME?

10:25AM 24 A. YES.

10:25AM 25 Q. AND YOU SAY, "I AM INTERESTED IN DOING A LARGER INVESTMENT

10:25AM 1 BUT AS A FIDUCIARY HAVE A DUTY TO COLLECT A LITTLE MORE
10:25AM 2 DILIGENCE. IT IS RARE THAT I INVEST WITHOUT KNOWING MORE ABOUT
10:25AM 3 THE FIRM'S FINANCIALS."

10:25AM 4 CAN YOU EXPLAIN WHAT YOU MEANT BY THAT?

10:25AM 5 A. THAT I HAD NOT EVER REALLY RECEIVED THE DETAILED
10:25AM 6 FINANCIALS THAT I WOULD NORMALLY REQUIRE FOR AN INVESTMENT OF
10:26AM 7 ANY LEVEL.

10:26AM 8 Q. AND WOULD RECEIVING THOSE ADDITIONAL DETAILS BE A
10:26AM 9 PRE-CONDITION FOR YOU TO INVEST MORE MONEY IN THE COMPANY?

10:26AM 10 A. IT WAS, YES.

10:26AM 11 Q. AND WAS THIS YOU CONVEYING THAT TO MR. BALWANI?

10:26AM 12 A. YES.

10:26AM 13 Q. IN THE FOLLOWING SENTENCE, DO YOU SEE THAT YOU OFFER TO
10:26AM 14 SIGN A NONDISCLOSURE AGREEMENT SO YOU COULD RECEIVE THAT
10:26AM 15 INFORMATION?

10:26AM 16 A. I DID, BECAUSE PRIOR CONVERSATIONS INDICATED THAT THEY
10:26AM 17 WANTED TO KEEP THE FINANCIALS CONFIDENTIAL TO PROHIBIT
10:26AM 18 COMPETITION FROM LEARNING ABOUT THEIR -- HOW THEY PRICE, AND
10:26AM 19 THEIR COSTS, AND THEIR INFRASTRUCTURE.

10:26AM 20 Q. AND IN RESPONSE TO YOUR REQUESTING FOR INFORMATION, DID
10:26AM 21 MR. BALWANI EVER PROVIDE YOU ADDITIONAL DISCLOSURES ABOUT THE
10:26AM 22 COMPANY?

10:26AM 23 A. NO.

10:26AM 24 Q. FOLLOWING THIS, DID YOU PURSUE AN ADDITIONAL INVESTMENT IN
10:26AM 25 THE COMPANY?

10:26AM 1 A. NO.

10:26AM 2 Q. OKAY. YOU CAN SET THAT ASIDE.

10:27AM 3 FOLLOWING YOUR INVESTMENT IN THERANOS IN JANUARY OF 2014,

10:27AM 4 DID YOU CONTINUE TO BE IN TOUCH WITH MR. BALWANI AND GET

10:27AM 5 INFORMATION ABOUT THE COMPANY?

10:27AM 6 A. I BELIEVE THAT THAT LAST EMAIL THAT I SENT HIM REQUESTING

10:27AM 7 FINANCIALS IN ORDER TO LOOK AT DOING MORE INVESTING WAS THE

10:27AM 8 LAST TIME THAT I EVER COMMUNICATED WITH MR. BALWANI.

10:27AM 9 Q. OKAY. LET'S LOOK AT 5821, PLEASE.

10:27AM 10 LET ME KNOW ONCE YOU'RE THERE.

10:27AM 11 A. I'M THERE.

10:27AM 12 Q. AT 5821, DO YOU SEE AN EMAIL THAT YOU SENT TO MR. BALWANI

10:27AM 13 IN MID-MAY 2014?

10:27AM 14 A. YES.

10:27AM 15 MR. BOSTIC: YOUR HONOR, WE OFFER 5821.

10:27AM 16 MR. CAZARES: NO OBJECTION.

10:27AM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:28AM 18 (GOVERNMENT'S EXHIBIT 5821 WAS RECEIVED IN EVIDENCE.)

10:28AM 19 BY MR. BOSTIC:

10:28AM 20 Q. SO, MR. MENDENHALL, WE'RE IN MID-MAY 2014, ABOUT FOUR

10:28AM 21 MONTHS AFTER YOUR INVESTMENT; IS THAT CORRECT?

10:28AM 22 A. YES.

10:28AM 23 Q. AND YOU WRITE TO MR. BALWANI, "HI SUNNY,

10:28AM 24 "I'M SURE U ARE VERY BUSY AND I HATE TO ASK BUT IS THERE

10:28AM 25 ANY WAY YOU COULD GIVE ME A HIGH LEVEL VERBAL UPDATE ON

10:28AM 1 THERANOS?"

10:28AM 2 DO YOU SEE THAT?

10:28AM 3 A. YES.

10:28AM 4 Q. WHY WERE YOU ASKING FOR INFORMATION ON THERANOS AT THIS
10:28AM 5 TIME?

10:28AM 6 A. WITH THE PARTNERSHIP THAT I HAD FORMED AND OTHER FRIENDS
10:28AM 7 THAT HAD INVESTED, AND CLIENTS AND COLLEAGUES, WE WERE JUST
10:28AM 8 REALLY QUIET SINCE THE CAPITAL WAS RAISED, AND WE JUST WANTED
10:28AM 9 TO GET AN UPDATE AND SEE WHAT WAS GOING ON.

10:28AM 10 Q. AND DO YOU SEE AT THE TOP OF THIS PAGE, MR. BALWANI
10:28AM 11 FORWARDS THIS EMAIL TO MS. HOLMES WITHOUT COMMENT?

10:28AM 12 A. I DO SEE THAT, YEAH.

10:28AM 13 Q. LET ME ASK YOU TO TURN NEXT TO 5820.

10:28AM 14 AND AT 5820, DO YOU SEE THAT SAME EMAIL WITH ADDITIONAL
10:29AM 15 FOLLOWUP?

10:29AM 16 A. YES.

10:29AM 17 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5820.

10:29AM 18 MR. CAZARES: NO OBJECTION.

10:29AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:29AM 20 (GOVERNMENT'S EXHIBIT 5820 WAS RECEIVED IN EVIDENCE.)

10:29AM 21 BY MR. BOSTIC:

10:29AM 22 Q. AND SO AT THE BOTTOM, MR. MENDENHALL, DO YOU SEE THIS SAME
10:29AM 23 EMAIL FROM YOU TO MR. BALWANI ASKING FOR A HIGH LEVEL VERBAL
10:29AM 24 UPDATE?

10:29AM 25 A. YES.

10:29AM 1 Q. OKAY. ABOVE THAT, DO YOU SEE THAT MR. BALWANI FORWARDS
10:29AM 2 YOUR EMAIL ALSO TO SOMEONE NAMED DANISE YAM?
10:29AM 3 A. YES.
10:29AM 4 Q. AND HE ASKS, "CAN YOU TELL ME WHICH ROUND HE INVESTED IN
10:29AM 5 AND HOW MUCH?"
10:29AM 6 DO YOU SEE THAT?
10:29AM 7 A. YES.
10:29AM 8 Q. AND DO YOU SEE THAT ABOVE THAT MS. YAM WRITES BACK TO
10:29AM 9 MR. BALWANI AND PROVIDES THAT INFORMATION, INDICATING THAT
10:29AM 10 YOU'D INVESTED A TOTAL OF 1.3 SOMETHING MILLION DOLLARS.
10:29AM 11 DO YOU SEE THAT?
10:29AM 12 A. YES.
10:29AM 13 Q. AND FOLLOWING THIS, DID YOU GET FROM MR. BALWANI A HIGH
10:29AM 14 LEVEL UPDATE THAT YOU WERE ASKING FOR?
10:30AM 15 A. NO.
10:30AM 16 Q. LET ME ASK YOU TO TURN TO -- ACTUALLY, EXHIBIT 1776 IS
10:30AM 17 ALREADY ADMITTED.
10:30AM 18 MAY WE DISPLAY, YOUR HONOR?
10:30AM 19 THE COURT: YES.
10:30AM 20 BY MR. BOSTIC:
10:30AM 21 Q. MR. MENDENHALL, DO YOU RECALL READING AN ARTICLE ABOUT
10:30AM 22 THERANOS IN "FORTUNE" MAGAZINE IN JUNE 2014?
10:30AM 23 A. YES.
10:30AM 24 Q. AND GENERALLY SPEAKING, WAS THE ARTICLE FAVORABLE OR
10:30AM 25 NEGATIVE ABOUT THERANOS?

10:30AM 1 A. IT WAS POSITIVE.

10:30AM 2 Q. OKAY. IF I COULD JUST DIRECT YOU TO A FEW OF THE POINTS
10:30AM 3 IN THIS ARTICLE.

10:30AM 4 FIRST, IF WE COULD LOOK AT PAGE 4 -- ACTUALLY, LET'S GO TO
10:30AM 5 PAGE 6.

10:30AM 6 AND BELOW THE INDENT, THE SECOND TO THE BOTTOM PARAGRAPH,
10:31AM 7 DO YOU SEE LANGUAGE THERE THAT SAYS, "THE COMPANY HAS PERFORMED
10:31AM 8 AS MANY AS 70 DIFFERENT TESTS FROM A SINGLE DRAW OF 25 TO 50
10:31AM 9 MICROLITERS"?

10:31AM 10 A. YES, I SEE THAT.

10:31AM 11 Q. AND DO YOU SEE THAT IT GOES ON TO SAY THAT THE SAMPLE IS
10:31AM 12 "COLLECTED IN A TINY VIAL THE SIZE OF AN ELECTRIC FUSE, WHICH
10:31AM 13 HOLMES HAS DUBBED THE 'NANOTAINER.'"

10:31AM 14 DO YOU SEE THAT?

10:31AM 15 A. YES.

10:31AM 16 Q. AND AROUND THIS TIME AS AN INVESTOR, WAS IT STILL
10:31AM 17 IMPORTANT TO YOU HOW MANY TESTS THERANOS COULD PURPORTEDLY RUN
10:31AM 18 FROM A SINGLE SAMPLE?

10:31AM 19 A. YES.

10:31AM 20 Q. LET'S GO TO PAGE 9 AND, AGAIN, THE SECOND TO THE BOTTOM
10:31AM 21 PARAGRAPH.

10:31AM 22 DO YOU SEE THERE IT SAYS, "IMPORTANTLY, IT'S NOT JUST THE
10:31AM 23 BLOOD DRAWS THAT ARE TINY. IT'S ALSO THE ANALYTICAL SYSTEMS
10:31AM 24 THERANOS USES TO PERFORM THE TESTS."

10:31AM 25 DO YOU SEE THAT?

10:31AM 1 A. YES.

10:31AM 2 Q. AND WAS THIS LANGUAGE ABOUT THERANOS USING SMALL ANALYZERS

10:31AM 3 CONSISTENT WITH YOUR DISCUSSION WITH MR. BALWANI?

10:32AM 4 A. YES.

10:32AM 5 Q. FINALLY, LET'S GO TO PAGE 11.

10:32AM 6 AND IN THE SECOND FULL PARAGRAPH, DO YOU SEE THERE'S

10:32AM 7 LANGUAGE THAT SAYS, "THERANOS, WHICH DOES NOT BUY ANY ANALYZERS

10:32AM 8 FROM THIRD PARTIES, IS THEREFORE IN A UNIQUE POSITION"?

10:32AM 9 A. YES.

10:32AM 10 Q. AND WAS THAT CONSISTENT WITH WHAT MR. BALWANI HAD TOLD YOU

10:32AM 11 ABOUT WHAT DEVICES THE COMPANY WAS USING?

10:32AM 12 A. YES.

10:32AM 13 Q. YOU MENTIONED THAT THIS ARTICLE WAS FAVORABLE IN JUNE OF

10:32AM 14 2014; IS THAT RIGHT?

10:32AM 15 A. YES, VERY.

10:32AM 16 Q. AND AS AN INVESTOR READING THIS ARTICLE, WHAT EFFECT DID

10:32AM 17 CLAIMS LIKE THESE HAVE ON YOUR STATE OF MIND?

10:32AM 18 A. WELL, I THINK IT CAME OUT AROUND THE SAME TIME THAT I WAS

10:32AM 19 ASKING FOR MORE INFORMATION, SO IT KIND OF ALLEVIATED SOME

10:32AM 20 CONCERNS THAT I WAS -- NOT CONCERNS, BUT IT SEEMED LIKE IT WAS

10:32AM 21 ANSWERING THE QUESTIONS THAT I MIGHT HAVE HAD AT THE TIME.

10:32AM 22 Q. AND DID IT MAKE YOU MORE OR LESS LIKELY TO GET MORE

10:33AM 23 INSISTENT AND DEMANDING WITH THERANOS AND REQUESTING THAT

10:33AM 24 INFORMATION?

10:33AM 25 A. WELL, THE ARTICLE WOULD PROBABLY MAKE ME LESS DEMANDING

10:33AM 1 THAN MORE DEMANDING.

10:33AM 2 Q. AND DID IT HAVE THAT EFFECT ON YOU IN 2014?

10:33AM 3 A. YES.

10:33AM 4 Q. AND LET ME ASK YOU TO LOOK AT 5819 IN YOUR BINDER.

10:33AM 5 DO YOU SEE 5819?

10:33AM 6 A. YES.

10:33AM 7 Q. AND IS THAT ANOTHER MESSAGE THAT YOU SENT TO MR. BALWANI,

10:33AM 8 THIS TIME IN DECEMBER OF 2014?

10:33AM 9 A. YES.

10:33AM 10 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5819.

10:33AM 11 MR. CAZARES: OBJECTION. HEARSAY. MIDDLE OF THE

10:33AM 12 MESSAGE.

10:34AM 13 THE COURT: MR. BOSTIC.

10:34AM 14 MR. BOSTIC: THIS IS NOT OFFERED FOR THE TRUTH,

10:34AM 15 YOUR HONOR. THIS IS OFFERED TO SHOW WHAT QUESTIONS THIS

10:34AM 16 WITNESS WAS ASKING MR. BALWANI AT THE TIME.

10:34AM 17 MR. CAZARES: SAME OBJECTION, YOUR HONOR. THAT'S

10:34AM 18 THE TRUTH.

10:34AM 19 THE COURT: 1 THROUGH 4.

10:34AM 20 MR. BOSTIC: YES, YOUR HONOR, 1 THROUGH 4.

10:34AM 21 NO, NOT OFFERED FOR THE TRUTH. IT'S OFFERED TO SHOW THAT

10:34AM 22 MR. BALWANI WAS BEING POSED THESE QUESTIONS AT THE TIME.

10:34AM 23 I THINK THE DEFENDANT'S RECEIPT OF THESE QUESTIONS AND HIS

10:34AM 24 LACK OF RESPONSE IS APPROPRIATE.

10:34AM 25 THE COURT: ALL RIGHT. THANK YOU.

10:34AM 1 I WILL OVERRULE THE OBJECTION.

10:34AM 2 BUT, LADIES AND GENTLEMEN, I'LL ADMIT THIS. YOU'LL SEE 1
10:34AM 3 THROUGH 4. THOSE STATEMENTS ARE NOT OFFERED FOR THE TRUTH OF
10:34AM 4 THE MATTER ASSERTED, BUT ONLY AS TO ESTABLISH QUESTIONS POSED,
10:34AM 5 BUT NOT FOR THE TRUTH OF THE MATTER ASSERTED.

10:34AM 6 WITH THAT LIMITATION, IT MAY BE ADMITTED AND PUBLISHED.

10:35AM 7 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:35AM 8 (GOVERNMENT'S EXHIBIT 5819 WAS RECEIVED IN EVIDENCE.)

10:35AM 9 BY MR. BOSTIC:

10:35AM 10 Q. LOOKING AT 5819, LET'S ZOOM IN ON YOUR EMAIL TO
10:35AM 11 MR. BALWANI.

10:35AM 12 AND DO YOU SEE HERE NOW WE'RE IN DECEMBER OF 2014?

10:35AM 13 A. YES.

10:35AM 14 Q. AND YOU INVESTED AT THE VERY BEGINNING OF THIS YEAR; IS
10:35AM 15 THAT RIGHT?

10:35AM 16 A. YES.

10:35AM 17 Q. YOU WRITE AN EMAIL TO MR. BALWANI REPORTING THAT YOU'VE
10:35AM 18 BEEN ASKED BY SEVERAL OF YOUR SHAREHOLDERS -- OR SEVERAL
10:35AM 19 THERANOS SHAREHOLDERS TO ASK FOR AS MUCH OF AN UPDATE THAT HE
10:35AM 20 CAN PROVIDE.

10:35AM 21 DO YOU SEE THAT?

10:35AM 22 A. YES.

10:35AM 23 Q. AND YOU THEN SAY, "THERE HAS BEEN NO UPDATE SINCE THE LAST
10:35AM 24 ROUND OF CAPITAL SEVERAL US COMMITTED IN JANUARY."

10:35AM 25 IS THAT ACCURATE?

10:35AM 1 A. YES.

10:35AM 2 Q. AND YOU ALSO RELAY -- YOU SAY SOME THINGS THAT THE GROUP

10:35AM 3 WAS HEARING ABOUT THE COMPANY.

10:35AM 4 DO YOU SEE THAT?

10:35AM 5 A. YES.

10:35AM 6 Q. AND THERE'S A LIST THERE.

10:35AM 7 NUMBER 1 SAYS, "THERE IS A COMPETITOR THAT CAN PERFORM

10:35AM 8 OVER 100 TESTS ON A SINGLE DROP OF BLOOD."

10:35AM 9 DO YOU SEE THAT?

10:35AM 10 A. YES.

10:35AM 11 Q. AND WHY WERE YOU ASKING MR. BALWANI TO RESPOND ON THAT

10:36AM 12 TOPIC?

10:36AM 13 A. THIS WAS A PRETTY ACTIVE GROUP OF INVESTORS, AND THERE WAS

10:36AM 14 VERY LITTLE COMMUNICATION FOR THAT -- DURING THAT PERIOD FROM

10:36AM 15 THE COMPANY, AND THEN THERE WERE RUMORS CIRCULATING AROUND THAT

10:36AM 16 WHILE --

10:36AM 17 MR. CAZARES: OBJECTION. HEARSAY.

10:36AM 18 THE WITNESS: WELL, I'M JUST --

10:36AM 19 THE COURT: NO, NO, NO. THE OBJECTION IS SUSTAINED.

10:36AM 20 THAT LAST PORTION IS STRICKEN.

10:36AM 21 YOU CAN ASK ANOTHER QUESTION.

10:36AM 22 BY MR. BOSTIC:

10:36AM 23 Q. SO, MR. MENDENHALL, WITHOUT DISCUSSING THE RUMORS, WHY WAS

10:36AM 24 IT IMPORTANT TO YOU AS AN INVESTOR THAT MR. BALWANI ANSWER

10:36AM 25 THESE QUESTIONS?

10:36AM 1 A. BECAUSE THERE WERE RUMORS, AND WE JUST WANTED AN UPDATE.

10:36AM 2 AND AS THIS GROUP HAD INVESTED A LOT OF CAPITAL, THERE

10:36AM 3 WAS -- I WOULD SPECULATE, BUT THEY ALL HAD A LOT OF MONEY IN

10:36AM 4 THE DEAL, AND FORTUNATELY OR UNFORTUNATELY, THEY WERE ASKING ME

10:36AM 5 TO, BECAUSE IT LOOKED LIKE I HAD A RELATIONSHIP WITH

10:37AM 6 MR. BALWANI, TO REACH OUT AND SEE WHAT I COULD FIND OUT.

10:37AM 7 Q. AND THE ITEMS IN THIS LIST, 1 THROUGH 4, WERE THESE FACTS

10:37AM 8 THAT, IF TRUE, WOULD HAVE MADE YOU AS AN INVESTOR FEEL MORE OR

10:37AM 9 LESS POSITIVE ABOUT YOUR INVESTMENT IN THE COMPANY?

10:37AM 10 A. LESS POSITIVE.

10:37AM 11 Q. IS THAT TRUE FOR ALL FOUR OF THESE ITEMS?

10:37AM 12 A. YES.

10:37AM 13 Q. AS TO ITEM 2, IT SAYS, "RESULTS FROM WALGREENS REQUIRE

10:37AM 14 SHIPPING BLOOD AND TAKE 24 TO 48 HOURS TO RECEIVE."

10:37AM 15 DO YOU SEE THAT?

10:37AM 16 A. YES.

10:37AM 17 Q. HAD MR. BALWANI EVER TOLD YOU THOSE FACTS BEFORE?

10:37AM 18 A. NO.

10:37AM 19 Q. AND 3 AND 4 ARE ALSO ABOUT THE STATUS OF THE WALGREENS

10:37AM 20 ROLLOUT.

10:37AM 21 DO YOU SEE THAT?

10:37AM 22 A. YES.

10:37AM 23 Q. AND WAS THE STATUS AND PACE OF THE WALGREENS ROLLOUT

10:37AM 24 SOMETHING THAT MATTERED TO YOU AS AN INVESTOR?

10:37AM 25 A. VERY MUCH SO.

10:37AM 1 Q. LET'S LOOK AT THE TOP OF THIS EMAIL AND SEE WHAT

10:37AM 2 MR. BALWANI DID AFTER RECEIVING IT.

10:38AM 3 DO YOU SEE THERE THAT HE AGAIN FORWARDED IT TO MS. HOLMES
10:38AM 4 WITHOUT COMMENT ON THE SAME DAY, DECEMBER 3RD, 2014?

10:38AM 5 A. YES.

10:38AM 6 Q. DID MR. BALWANI EVER GET BACK TO YOU AND ANSWER THESE
10:38AM 7 QUESTIONS THAT YOU POSED TO HIM?

10:38AM 8 A. NO.

10:38AM 9 Q. THE FOLLOWING YEAR IN 2015, DO YOU RECALL A NEGATIVE
10:38AM 10 ARTICLE ABOUT THERANOS BEING PUBLISHED BY "THE
10:38AM 11 WALL STREET JOURNAL"?

10:38AM 12 A. YES.

10:38AM 13 Q. DID THAT ARTICLE DISCUSS THE COMPANY'S USE OF THIRD PARTY
10:38AM 14 DEVICES?

10:38AM 15 A. I BELIEVE SO, YES.

10:38AM 16 Q. PRIOR TO READING THAT ARTICLE, HAD YOU KNOWN ABOUT
10:38AM 17 THERANOS'S USE OF NON-THERANOS ANALYZERS?

10:38AM 18 A. NO.

10:38AM 19 Q. UPON READING THAT ARTICLE, DID YOU IMMEDIATELY BELIEVE ALL
10:38AM 20 OF THE NEGATIVE REPORTING ABOUT THE COMPANY?

10:38AM 21 A. NO.

10:38AM 22 Q. FOLLOWING READING THAT ARTICLE, DID YOU HAVE ADDITIONAL
10:38AM 23 CONVERSATIONS WITH EITHER MR. BALWANI OR MS. HOLMES?

10:39AM 24 A. MY COMMUNICATIONS WERE REVERTED TO MS. HOLMES AT THAT TIME
10:39AM 25 GOING FORWARD.

10:39AM 1 Q. DURING THOSE COMMUNICATIONS WITH MS. HOLMES, DO YOU RECALL
10:39AM 2 HER ADMITTING ANY OF THE TRUTH OF THE ALLEGATIONS IN "THE
10:39AM 3 WALL STREET JOURNAL" ARTICLE?

10:39AM 4 A. NOT IMMEDIATELY, OR NEVER TO ME I SHOULD SAY.

10:39AM 5 Q. FOLLOWING READING THAT ARTICLE, DID YOUR ATTITUDE ABOUT
10:39AM 6 YOUR INVESTMENT IN THERANOS EVENTUALLY CHANGE?

10:39AM 7 A. IT -- MY ATTITUDE -- I WAS CONCERNED, BUT TRYING TO BE
10:39AM 8 SUPPORTIVE.

10:39AM 9 Q. AND DID THAT CONTINUE FOR SEVERAL MONTHS AFTERWARDS?

10:39AM 10 A. YES.

10:39AM 11 Q. WHAT IS THE CURRENT VALUE OF YOUR INVESTMENT IN THERANOS
10:39AM 12 AS YOU UNDERSTAND IT?

10:39AM 13 A. IT'S ZERO.

10:39AM 14 MR. BOSTIC: CAN I HAVE A MOMENT, YOUR HONOR?

10:40AM 15 THE COURT: YES.

10:40AM 16 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

10:40AM 17 MR. BOSTIC: NO FURTHER QUESTIONS FOR NOW. THANK
10:40AM 18 YOU.

10:40AM 19 THE COURT: CROSS-EXAMINATION?

10:40AM 20 MR. CAZARES: YES, YOUR HONOR.

10:40AM 21 THE COURT: FOLKS, WHILE WE'RE WAITING, YOU CAN
10:40AM 22 STAND AND STRETCH.

10:40AM 23 SIR, IF YOU WOULD LIKE TO STAND AND STRETCH.

10:40AM 24 (STRETCHING.)

10:40AM 25 MR. CAZARES: YOUR HONOR, MAY I APPROACH THE

10:40AM 1 WITNESS?

10:40AM 2 THE COURT: YES.

10:40AM 3 MR. CAZARES: (HANDING.)

10:41AM 4 YOUR HONOR, MAY I REMOVE MY MASK?

10:41AM 5 THE COURT: YES.

10:41AM 6 MR. CAZARES: THANK YOU.

10:41AM 7 **CROSS-EXAMINATION**

10:41AM 8 BY MR. CAZARES:

10:41AM 9 Q. GOOD MORNING, MR. MENDENHALL.

10:41AM 10 A. GOOD MORNING.

10:41AM 11 Q. MY NAME IS STEPHEN CAZARES, AND I REPRESENT MR. BALWANI.

10:41AM 12 AND I HAVE A FEW QUESTIONS FOR YOU REGARDING YOUR TESTIMONY

10:41AM 13 HERE THIS MORNING.

10:41AM 14 WOULD THAT BE OKAY?

10:41AM 15 A. YES.

10:41AM 16 Q. OKAY. SO THIS MORNING YOU DESCRIBED YOUR BACKGROUND TO

10:41AM 17 THE JURY, AND I JUST WANTED TO CONFIRM SOME OF THAT.

10:41AM 18 SO YOU WERE A VERY EXPERIENCED INVESTOR AS OF 2013; IS

10:41AM 19 THAT CORRECT?

10:41AM 20 A. I WOULD SAY SO.

10:41AM 21 Q. OKAY. THAT'S BOTH PRIMARILY RELATING TO PUBLIC

10:42AM 22 SECURITIES, BUT ALSO PRIVATE INVESTMENTS; CORRECT?

10:42AM 23 A. YES.

10:42AM 24 Q. OKAY. AND THE COMPANIES THAT YOU WORKED AT THAT YOU

10:42AM 25 OUTLINED THROUGHOUT YOUR CAREER, MERRILL LYNCH,

10:42AM 1 LEHMAN BROTHERS, PAINE WEBBER, THESE AT RELEVANT TIMES WERE AT
10:42AM 2 THE FOREFRONT OF AMERICAN FINANCING; CORRECT?
10:42AM 3 A. YES.
10:42AM 4 Q. AND YOU'VE BEEN THE HEAD OF U.S. CAPITAL ADVISORS NOW FOR
10:42AM 5 MORE THAN A DECADE?
10:42AM 6 A. YES.
10:42AM 7 Q. AND U.S. CAPITAL ADVISORS HANDLES, YOU KNOW, CORPORATE
10:42AM 8 FINANCE, MONEY MANAGEMENT FOR INDIVIDUAL FAMILIES, AS WELL AS
10:42AM 9 INVESTMENT OPPORTUNITIES FOR THEIR CLIENTS; CORRECT?
10:42AM 10 A. YES.
10:42AM 11 Q. NOW, AT THE TIME THAT YOU INVESTED IN THERANOS, YOU WERE
10:42AM 12 STILL AT UBS; IS THAT CORRECT?
10:42AM 13 A. THE FIRST ROUND, YES.
10:42AM 14 Q. OKAY. AND THAT'S BACK IN 2005, 2006 THAT YOU INDICATED?
10:43AM 15 A. CORRECT.
10:43AM 16 Q. OKAY. AND YOU WERE ACTUALLY THE MANAGING DIRECTOR OF UBS;
10:43AM 17 IS THAT CORRECT?
10:43AM 18 A. YES.
10:43AM 19 Q. AND IT'S A HIGH RANKING POSITION?
10:43AM 20 A. YES.
10:43AM 21 Q. OKAY. NOW, YOU DESCRIBED A COLLEAGUE OF YOURS AT U.S.
10:43AM 22 CAPITAL, A MR. DAVID HARRIS.
10:43AM 23 DO YOU REMEMBER THAT?
10:43AM 24 A. YES.
10:43AM 25 Q. AND MR. HARRIS WORKED FOR YOU AT U.S. CAPITAL?

10:43AM 1 A. HE REPORTED TO ME, YES.

10:43AM 2 Q. HE WAS --

10:43AM 3 A. HE REPORTS TO ME.

10:43AM 4 Q. I APOLOGIZE. I DON'T MEAN TO STEP OVER YOU.

10:43AM 5 A. NO, THAT'S OKAY.

10:43AM 6 Q. I APOLOGIZE.

10:43AM 7 AND MR. HARRIS WAS AN INVESTMENT ADVISOR?

10:43AM 8 A. YES.

10:43AM 9 Q. SO A MONEY MANAGER FOR INDIVIDUALS AND COMPANIES?

10:43AM 10 A. YES.

10:43AM 11 Q. AND HE WAS A SENIOR ADVISOR AT UBS AT THE TIME?

10:43AM 12 A. STILL IS, YES.

10:43AM 13 Q. AND MR. HARRIS MANAGED THE FAMILY MONEY FOR MS. HOLMES'S

10:43AM 14 FAMILY; IS THAT CORRECT?

10:43AM 15 A. AT SOME POINT I BELIEVE THAT'S TRUE.

10:44AM 16 Q. AND SO IT WAS MR. HARRIS WHO WAS KIND OF THE INTRO TO

10:44AM 17 MS. HOLMES AND THERANOS; CORRECT?

10:44AM 18 A. YES.

10:44AM 19 Q. AND IS IT ACCURATE TO SAY THEN THAT MR. HARRIS WAS REALLY

10:44AM 20 YOUR SOURCE OF INFORMATION RELATING TO THERANOS IN THOSE EARLY

10:44AM 21 YEARS?

10:44AM 22 A. YES.

10:44AM 23 Q. AND BACK IN THAT EARLY TIME PERIOD, THE 2005, 2006 TIME

10:44AM 24 PERIOD, WE'RE TALKING ABOUT YOUR INITIAL INVESTMENT OF ABOUT

10:44AM 25 \$50,000.

10:44AM 1 TO THE EXTENT THAT YOU LEARNED ANYTHING ABOUT THERANOS'S
10:44AM 2 TECHNOLOGY, AGAIN, THAT CAME FROM MR. HARRIS?
10:44AM 3 A. YES.
10:44AM 4 Q. BUT YOU DID UNDERSTAND AT THAT TIME THAT THERANOS WAS
10:44AM 5 STILL A THE DEVELOPMENT STAGE COMPANY; IS THAT FAIR?
10:44AM 6 A. YES.
10:44AM 7 Q. AND AT THAT TIME BACK IN 2006, YOU RECEIVED NO WRITTEN
10:44AM 8 MATERIALS RELATING TO THE INVESTMENT; CORRECT?
10:44AM 9 A. YES, NOT THAT I RECALL.
10:44AM 10 Q. NO PROSPECTUS?
10:45AM 11 A. IT'S POSSIBLE. I JUST DON'T RECALL.
10:45AM 12 Q. NO FINANCIAL DETAILS?
10:45AM 13 A. NO REAL FINANCIALS.
10:45AM 14 Q. AND IS IT FAIR TO SAY THAT YOU NEVER RECEIVED FINANCIAL
10:45AM 15 INFORMATION OR DETAILS FROM MS. HOLMES RELATING TO THERANOS?
10:45AM 16 A. NOT THAT I RECALL.
10:45AM 17 Q. OKAY. AND BACK IN THAT TIME PERIOD, 2005 OR 2006, YOU
10:45AM 18 NEVER ASKED FOR IT; CORRECT?
10:45AM 19 A. NO. I HAD NO DIRECT COMMUNICATION WITH THE COMPANY.
10:45AM 20 Q. AND BACK IN THAT EARLY TIME PERIOD, 2005, 2006, OF YOUR
10:45AM 21 INITIAL INVESTMENT, YOU NEVER RECEIVED ANY SORT OF, LIKE,
10:45AM 22 DEMONSTRATION OF THE TECHNOLOGY, THE STATUS OF THE TECHNOLOGY;
10:45AM 23 CORRECT?
10:45AM 24 A. CORRECT.
10:45AM 25 Q. AND JUST TO CONFIRM, SO PRIOR TO YOUR INVESTMENT OF THE

10:45AM 1 50-SOME THOUSAND DOLLARS IN 2006, YOU HAD NEVER SPOKEN TO

10:46AM 2 MS. HOLMES?

10:46AM 3 A. CORRECT.

10:46AM 4 Q. NEVER EMAILED MS. HOLMES?

10:46AM 5 A. CORRECT.

10:46AM 6 Q. AND NEVER COMMUNICATED WITH MS. HOLMES?

10:46AM 7 A. CORRECT.

10:46AM 8 Q. OR ANYONE AT THERANOS AT THAT TIME?

10:46AM 9 A. CORRECT.

10:46AM 10 Q. SO THE INVESTMENT WAS ENTIRELY RELIANT OF YOUR

10:46AM 11 UNDERSTANDING UPON MR. HARRIS AND WHAT HE TOLD YOU?

10:46AM 12 A. YES.

10:46AM 13 Q. AND IT WOULD BE ACCURATE, WOULD IT NOT, THAT IN THAT 2005

10:46AM 14 AND 2006 TIME PERIOD, YOU HAD NO IDEA WHO MR. BALWANI WAS;

10:46AM 15 CORRECT?

10:46AM 16 A. CORRECT.

10:46AM 17 Q. AND HAD NEVER COMMUNICATED WITH HIM?

10:46AM 18 A. NO.

10:46AM 19 Q. DIDN'T KNOW OF ANY RELATIONSHIP BETWEEN MR. BALWANI AND

10:46AM 20 MS. HOLMES?

10:46AM 21 A. NO.

10:46AM 22 Q. AND IS IT CORRECT THEN FROM THAT TIME PERIOD IN 2006 AND

10:46AM 23 UNTIL LATE 2012, 2013, YOU HEARD NOTHING FROM ANYONE AT

10:46AM 24 THERANOS?

10:46AM 25 A. I BELIEVE I HEARD NOTHING OR NEXT TO NOTHING, YEAH.

10:46AM 1 Q. BUT YOU DID --

10:46AM 2 A. THERE WERE SOME NOTICES AND THINGS THAT WOULD COME, BUT

10:46AM 3 NOTHING SPECIFIC THAT I CAN RECALL.

10:47AM 4 Q. AND YOU DID PERIODICALLY RECEIVE SOME INFORMATION FROM

10:47AM 5 MR. HARRIS THOUGH; CORRECT?

10:47AM 6 A. UM, I BELIEVE JUST VERBALLY, WHATEVER HE WAS HEARING.

10:47AM 7 Q. AND DID YOU TAKE ANY NOTES OF THOSE COMMUNICATIONS WITH

10:47AM 8 MR. HARRIS, THOSE UPDATES?

10:47AM 9 A. NO.

10:47AM 10 Q. AND YOU DON'T RECALL THE DETAILS, DO YOU?

10:47AM 11 A. NO.

10:47AM 12 Q. AND YOU HAVEN'T PROVIDED THOSE TO THE GOVERNMENT HERE IN

10:47AM 13 THIS CASE, HAVE YOU?

10:47AM 14 A. NO.

10:47AM 15 Q. NOW, IN 2006 WHEN YOU INVESTED IN THERANOS, IT WAS

10:47AM 16 EXCITING, THE IDEA, WAS IT NOT?

10:47AM 17 A. YES, IT SOUNDED LIKE A GOOD IDEA.

10:47AM 18 Q. AND AT THAT TIME, GIVEN THE DEVELOPMENT STAGE OF THE

10:48AM 19 COMPANY, YOU UNDERSTOOD IT WAS A LONG-TERM INVESTMENT; CORRECT?

10:48AM 20 A. YES. IT WAS -- I BELIEVE IT WAS MORE OF AN INVESTMENT IN

10:48AM 21 ELIZABETH HOLMES AND WHAT SHE WAS ATTEMPTING TO DO AT THAT

10:48AM 22 POINT.

10:48AM 23 Q. AND GIVEN THAT, THERANOS WAS A PRIVATELY HELD COMPANY AT

10:48AM 24 THE TIME; CORRECT?

10:48AM 25 A. YES.

10:48AM 1 Q. AND WAS ALWAYS A PRIVATELY HELD COMPANY; CORRECT?

10:48AM 2 A. YES.

10:48AM 3 Q. AND GIVEN THAT, YOU UNDERSTOOD WHEN YOU WERE INVESTING IN
10:48AM 4 THERANOS THAT YOU WEREN'T NECESSARILY ENTITLED TO OBTAIN
10:48AM 5 FINANCIAL INFORMATION OR CORPORATE DETAILS AS ONE WOULD WHEN
10:48AM 6 ONE INVESTS IN A PUBLIC COMPANY; CORRECT?

10:48AM 7 A. YES.

10:48AM 8 Q. AND YOU UNDERSTAND THAT -- YOU UNDERSTOOD THAT BEFORE
10:48AM 9 INVESTING IN 2006?

10:48AM 10 A. YOU KNOW, I WOULD -- A LOT OF TIMES THERE ARE DOCUMENTS
10:48AM 11 THAT YOU SIGN OUTLINING THE RESPONSIBILITY OF THE CORPORATION
10:48AM 12 TO REPORT TO YOU.

10:48AM 13 I JUST DON'T RECALL IN THE DOCUMENTS THAT I SIGNED TO
10:49AM 14 INITIALLY INVEST IF THEY HAD OUTLINED THAT THEY WOULD PROVIDE
10:49AM 15 QUARTERLY OR ANNUAL FINANCIALS. I DON'T RECALL THAT.

10:49AM 16 BUT, YEAH, THEY DID NOT PROVIDE ANY.

10:49AM 17 Q. SO AS A PRACTICAL MATTER, YOU UNDERSTOOD AT THE TIME THAT
10:49AM 18 YOU WEREN'T RECEIVING DETAILS; CORRECT?

10:49AM 19 A. YES.

10:49AM 20 Q. AND BY THE TIME OF THE 2013 INVESTMENT BY YOUR FRIENDS AND
10:49AM 21 FAMILY, YOU ALSO UNDERSTOOD THAT YOU WEREN'T RECEIVING
10:49AM 22 FINANCIAL DETAILS OR PROSPECTUSES OR A FINANCIAL REPORT BY THE
10:49AM 23 COMPANY; CORRECT?

10:49AM 24 A. I HAD NOT RECEIVED ANY, CORRECT.

10:49AM 25 Q. BUT YOU STILL INVESTED; CORRECT?

10:49AM 1
10:49AM 2
10:49AM 3
10:49AM 4
10:50AM 5
10:50AM 6
10:50AM 7
10:50AM 8
10:50AM 9
10:50AM 10
10:50AM 11
10:50AM 12
10:50AM 13
10:50AM 14
10:50AM 15
10:50AM 16
10:50AM 17
10:50AM 18
10:50AM 19
10:51AM 20
10:51AM 21
10:51AM 22
10:51AM 23
10:51AM 24
10:51AM 25

A. YES.

Q. MR. MENDENHALL -- I WAS GOING TO SAY MENDELSON. SORRY.

MR. MENDENHALL, IF YOU COULD TAKE A LOOK AT THE BINDER I'VE HANDED YOU, IT HAS SOME EXHIBITS IN THERE. IF YOU COULD TAKE A LOOK AT EXHIBIT 5814.

AND ACTUALLY 5814, I BELIEVE, IS ALREADY IN EVIDENCE.

THE COURT: I DON'T BELIEVE IT'S IN THE BINDER.

THE WITNESS: YEAH, I DON'T SEE IT IN THE BINDER.

MR. CAZARES: AM I CORRECT THAT 5814 IS IN EVIDENCE?

THE CLERK: IT IS.

MR. CAZARES: MAY I PUBLISH, YOUR HONOR?

THE COURT: YES.

THE WITNESS: IS IT ON THE SCREEN OR --

BY MR. CAZARES:

Q. IT IS. IT IS BEING PUBLISHED FOR YOU.

SO 5814 YOU TALKED ABOUT A LITTLE BIT THIS MORNING IS THIS DECEMBER 16TH, 2013 EMAIL FROM THERANOS TO YOURSELF, AND THERE'S A DESCRIPTION, "BELOW FIND A MEMO TO STOCKHOLDERS REGARDING CERTAIN DEALS AND TRANSACTIONS WE'RE WORKING TO CLOSE BY YEAR END. WE'VE ATTACHED YOUR SIGNATURE PAGES TO THE ASSOCIATED SHAREHOLDER CONSENTS TO THIS EMAIL."

DO YOU SEE THAT?

A. YES.

Q. NOW, WHEN YOU RECEIVED THIS EMAIL, YOU HAD ALREADY RECEIVED SOME UPDATES REGARDING THE COMPANY FROM MS. HOLMES AND

10:51AM 1 SOME PUBLIC REPORTING; CORRECT?

10:51AM 2 A. I BELIEVE SO, YES.

10:51AM 3 Q. SO YOU DESCRIBED, I THINK, A COUPLE OF CONVERSATIONS YOU
10:51AM 4 MAY HAVE HAD WITH MS. HOLMES IN 2013.

10:51AM 5 A. YES.

10:51AM 6 Q. OKAY. AND THEN THERE WERE SOME PUBLIC ANNOUNCEMENTS
10:51AM 7 RELATING TO THE WALGREENS ROLLOUT.

10:51AM 8 YOU SAW THAT?

10:51AM 9 A. YES.

10:51AM 10 Q. AND YOU ALSO SAW "THE WALL STREET JOURNAL" ARTICLE THAT
10:51AM 11 YOU SPOKE ABOUT THIS MORNING?

10:51AM 12 A. YES.

10:51AM 13 Q. AND ALL OF THAT WAS EXCITING; CORRECT?

10:51AM 14 A. YES.

10:51AM 15 Q. AND GIVEN THE YEARS HAD PASSED AND YOU HEARD NOTHING AND
10:51AM 16 ALL OF A SUDDEN THE COMPANY THAT YOU PUT \$50,000 INTO IN 2006
10:51AM 17 WAS NOW IN "THE WALL STREET JOURNAL" BEING COVERED, THAT WAS
10:51AM 18 EXCITING?

10:51AM 19 A. YES.

10:51AM 20 Q. AND THAT KIND OF BODED WELL FOR THE POTENTIAL FUTURE OF
10:51AM 21 THE COMPANY; CORRECT?

10:52AM 22 A. YES.

10:52AM 23 Q. NOW, YOU DESCRIBED THIS EMAIL AS INDICATING TO YOU THAT
10:52AM 24 THE COMPANY WAS GOING TO BE RAISING MORE FUNDS; CORRECT?

10:52AM 25 A. YES.

10:52AM 1 Q. AND THOSE FUNDS WERE LIKELY GOING TO BE COMING FROM LARGE
10:52AM 2 INSTITUTIONAL INVESTORS; CORRECT?

10:52AM 3 A. I WASN'T SURE WHERE THEY WERE COMING FROM, BUT MY -- THE
10:52AM 4 THOUGHTS WERE THAT THEY WERE GOING TO BE COMING FROM LARGER
10:52AM 5 SOURCES, YES.

10:52AM 6 Q. OKAY. AND THAT ALSO WAS EXCITING, WAS IT NOT?

10:52AM 7 A. YEAH. IT VALIDATES YOUR VALUES WHEN MORE SOPHISTICATED
10:52AM 8 INVESTORS GET IN.

10:52AM 9 Q. AND THE FACT THAT MORE SOPHISTICATED INVESTORS WERE COMING
10:52AM 10 IN WITH MORE FUNDS, AGAIN, BODED WELL FOR THE FUTURE OF THE
10:52AM 11 COMPANY TO GROW AND EXECUTE ON ITS BUSINESS PLAN; CORRECT?

10:52AM 12 A. YES.

10:52AM 13 Q. AND THAT ALSO CONTRIBUTED TO YOUR DECISION TO INVEST;
10:52AM 14 CORRECT?

10:52AM 15 A. YES.

10:52AM 16 Q. THE FACT THAT OTHER INVESTORS WERE REVIEWING THE SAME
10:52AM 17 COMPANY AND COMING TO SIMILAR CONCLUSIONS THAT YOU WERE;
10:53AM 18 CORRECT?

10:53AM 19 A. YES.

10:53AM 20 Q. AND I THINK YOU DESCRIBED WHEN YOU LEARNED ABOUT THIS
10:53AM 21 OPPORTUNITY TO POTENTIALLY INVEST COMBINED WITH THE COVERAGE
10:53AM 22 THAT THE COMPANY HAD BEEN GETTING, AGAIN, FROM
10:53AM 23 "THE WALL STREET JOURNAL," THE ANNOUNCEMENT OF THE WALGREENS
10:53AM 24 RELATIONSHIP, IN YOUR MIND YOU VIEWED THIS OPPORTUNITY TO
10:53AM 25 INVEST AS INCREDIBLE; CORRECT?

10:53AM 1

A. YES.

10:53AM 2

Q. NOW, THE FACT OF THIS PUBLIC COVERAGE OF THERANOS, AGAIN,

10:54AM 3

"WALL STREET JOURNAL," THE WALGREENS RELATIONSHIP, COMBINED

10:54AM 4

WITH THIS INFORMATION THAT YOU WERE RECEIVING THAT THEY WERE

10:54AM 5

GOING TO BE RECEIVING LIKELY SOME ADDITIONAL FUNDS TO GROW THE

10:54AM 6

BUSINESS, YOU UNDERSTOOD THAT THAT STILL DIDN'T MEAN A

10:54AM 7

GUARANTEE THAT THERANOS WAS GOING TO WORK OUT AND EXECUTE ON

10:54AM 8

THE BUSINESS PLAN; CORRECT?

10:54AM 9

A. YES.

10:54AM 10

Q. NOTWITHSTANDING YOUR OWN, YOU KNOW, ANALYSIS OF THE

10:54AM 11

COMPANY AND POSSIBLY THESE OTHER SOPHISTICATED INVESTORS

10:54AM 12

REVIEWING THE COMPANY POSITIVELY, THAT THERE ARE STILL

10:54AM 13

EXECUTION RISKS IN ANY BUSINESS PLAN; CORRECT?

10:54AM 14

A. YES.

10:54AM 15

Q. AND YOU UNDERSTOOD THAT?

10:54AM 16

A. YES.

10:54AM 17

Q. AND YOU ALSO UNDERSTOOD THAT IN THAT TIME PERIOD, AGAIN,

10:54AM 18

THIS IS LATE 2013, THE RETAIL BUSINESS OF THERANOS IS STARTING

10:54AM 19

TO OFFER BLOOD TESTING TO PATIENTS IN WALGREENS STORES, THAT

10:54AM 20

PART OF THE BUSINESS WAS BRAND NEW; CORRECT?

10:54AM 21

A. YES.

10:54AM 22

Q. AND GIVEN THAT IT WAS A BRAND NEW VENTURE REALLY FOR THE

10:55AM 23

COMPANY GOING FROM THIS KIND OF UNDERGROUND TIME PERIOD TO NOW

10:55AM 24

OFFERING A RETAIL PRODUCT TO PATIENTS, THAT AGAIN ADDED

10:55AM 25

ADDITIONAL RISKS TO THE BUSINESS THAT YOU UNDERSTOOD; CORRECT?

10:55AM 1 A. YEAH. I MEAN, THERE'S AN ELEMENT OF ASSUMPTION THAT A
10:55AM 2 PUBLIC COMPANY THE SIZE OF WALGREENS HAD DONE THEIR HOMEWORK,
10:55AM 3 TOO.

10:55AM 4 Q. AND AGAIN, THAT ALSO KIND OF INFLUENCED AND CONTRIBUTED TO
10:55AM 5 YOUR DECISION TO INVEST WITH YOUR FRIENDS AND FAMILY; CORRECT?

10:55AM 6 A. YES.

10:55AM 7 Q. ABSENT THAT RELATIONSHIP WITH WALGREENS, THERE MAY NOT
10:55AM 8 HAVE BEEN A GOOD REASON TO INVEST IN THERANOS AT THAT TIME;
10:55AM 9 CORRECT?

10:55AM 10 MR. BOSTIC: OBJECTION. IT CALLS FOR SPECULATION.

10:55AM 11 THE COURT: SUSTAINED.

10:55AM 12 YOU CAN REPHRASE THAT IF YOU WOULD LIKE.

10:55AM 13 BY MR. CAZARES:

10:55AM 14 Q. THE RELATIONSHIP WITH WALGREENS WAS IMPORTANT TO YOUR
10:55AM 15 DECISION TO INVEST; CORRECT?

10:55AM 16 A. IT CERTAINLY WAS A CONTRIBUTOR.

10:55AM 17 Q. OKAY. NOW, IN THIS -- IN THE TIME PERIOD BEFORE 2013 WHEN
10:56AM 18 YOU WERE NOT RECEIVING MUCH INFORMATION FROM MR. HARRIS, DID
10:56AM 19 YOU EVER LEARN ABOUT THERANOS RUNNING LOW ON FUNDS IN AROUND
10:56AM 20 2009?

10:56AM 21 A. NOT THAT I CAN RECALL.

10:56AM 22 Q. NOW, GIVEN YOU WERE IN FINANCE, IN 2009, THAT TIME PERIOD,
10:56AM 23 THESE WERE ROCKY TIMES IN AMERICAN FINANCE AND CORPORATE
10:56AM 24 AMERICA; CORRECT?

10:56AM 25 A. YES.

10:56AM 1 Q. WHAT WAS HAPPENING AT THAT TIME?

10:56AM 2 A. WELL, THERE WAS A FINANCIAL CRISIS IN 2008 AND THE MARKETS

10:56AM 3 MELTED DOWN, AND THERE WAS A LOT OF CRAZINESS.

10:56AM 4 Q. AND AMONG THE CRISES, ONE OF THE EFFECTS BECAME KIND OF A

10:56AM 5 LIQUIDITY CRISIS, WASN'T IT? AN INABILITY OF CORPORATIONS TO

10:57AM 6 GAIN FINANCING, OR OBTAIN FINANCING EASILY ANYWAY?

10:57AM 7 A. YES, IT BECAME MORE DIFFICULT.

10:57AM 8 Q. OKAY. AND IN THAT TIME PERIOD, DID MR. HARRIS LET YOU

10:57AM 9 KNOW THAT THERANOS WAS RUNNING INTO SIMILAR ISSUES WITH ACCESS

10:57AM 10 TO CAPITAL LIKE MANY IN CORPORATE AMERICA WERE AT THE TIME?

10:57AM 11 A. NOT THAT I CAN RECALL.

10:57AM 12 Q. DID YOU EVER LEARN THAT MR. BALWANI HIMSELF GUARANTEED A

10:57AM 13 \$10 MILLION LINE OF CREDIT FOR THERANOS SO IT COULD STAY IN

10:57AM 14 OPERATION DURING THOSE ROCKY TIMES IN 2009?

10:57AM 15 A. I DID NOT KNOW THAT. I DID NOT KNOW THAT UNTIL TODAY.

10:57AM 16 Q. AND IS IT ACCURATE TO SAY THAT PRIOR TO 2013, YOU HAD NO

10:57AM 17 IDEA OF MR. BALWANI'S ROLE IN THE COMPANY; CORRECT?

10:57AM 18 A. CORRECT. I'M NOT SURE WHEN I -- IT WAS AROUND THAT PERIOD

10:57AM 19 THAT I'M SURE I LEARNED ABOUT IT, BUT I DON'T KNOW EXACTLY -- I

10:57AM 20 CAN'T RECALL SPECIFICALLY WHEN I LEARNED ABOUT HIS ROLE.

10:58AM 21 MR. CAZARES: YOUR HONOR, I BELIEVE EXHIBIT 1113 IS

10:58AM 22 IN EVIDENCE.

10:58AM 23 MAY I PUBLISH?

10:58AM 24 THE COURT: YES.

10:58AM 25 BY MR. CAZARES:

10:58AM 1 Q. MR. MENDENHALL, ON THE SCREEN IS A PRESS RELEASE, AN
10:58AM 2 ANNOUNCEMENT BY THERANOS AND WALGREENS RELATING TO A
10:58AM 3 PARTNERSHIP, THAT WAS ISSUED ON SEPTEMBER 9TH OF 2013.

10:58AM 4 DO YOU SEE THAT?

10:58AM 5 A. YES.

10:58AM 6 Q. AND IN THAT TIME PERIOD, ROUGHLY, WERE YOU AWARE OF THIS
10:58AM 7 PUBLIC ANNOUNCEMENT OF THE WALGREENS PARTNERSHIP?

10:58AM 8 A. YES.

10:58AM 9 Q. OKAY. AND LIKE YOU SAID BEFORE, THAT WAS EXCITING?

10:58AM 10 A. YES.

10:58AM 11 Q. WALGREENS WAS ACTUALLY AN INTERNATIONAL RETAILER; CORRECT?

10:58AM 12 A. YES.

10:58AM 13 Q. AND YOU BELIEVED WALGREENS HAD THE ABILITY TO HELP A SMALL
10:59AM 14 COMPANY LIKE THERANOS SCALE ITS BUSINESS NATIONALLY; CORRECT?

10:59AM 15 A. YES.

10:59AM 16 Q. NOW, IN YOUR, IN YOUR TESTIMONY THIS MORNING IN RESPONSE
10:59AM 17 TO, I THINK, MULTIPLE QUESTIONS BY THE GOVERNMENT, YOU WERE
10:59AM 18 ASKED ABOUT YOUR UNDERSTANDING OF THERANOS'S TECHNOLOGY.

10:59AM 19 IS IT FAIR TO SAY THAT YOUR UNDERSTANDING OF THERANOS'S
10:59AM 20 TECHNOLOGY, ITS PROPRIETARY TECHNOLOGY, WAS THIS FINGERSTICK
10:59AM 21 TESTING; CORRECT?

10:59AM 22 A. YES.

10:59AM 23 Q. AND YOU UNDERSTAND THAT THEY HAD DEVELOPED THEIR OWN
10:59AM 24 ANALYZER OR DEVICE THAT WAS USED TO DO THE ANALYSIS OF BLOOD
10:59AM 25 SAMPLES FROM A FINGERSTICK?

10:59AM 1

A. YES.

10:59AM 2

Q. BUT YOU WERE NEVER AWARE IN THIS 2013 TIME PERIOD OF THE

10:59AM 3

DETAILS OF HOW THERANOS PERFORMED THE TESTING THAT THEY DID ON

10:59AM 4

FINGERSTICK SAMPLES; CORRECT?

10:59AM 5

A. CORRECT.

10:59AM 6

Q. NOW, YOU ALSO TESTIFIED, I THINK, IN RESPONSE TO THE

11:00AM 7

QUESTIONS BY THE GOVERNMENT, THAT YOU WERE UNAWARE OF THE FACT

11:00AM 8

THAT THERANOS, BY THE TIME IT STARTED TESTING PATIENT SAMPLES

11:00AM 9

THROUGH WALGREENS STORES, WAS STILL USING VENOUS DRAW OR

11:00AM 10

TRADITIONAL METHODS; CORRECT?

11:00AM 11

A. YES.

11:00AM 12

Q. AND I THINK WHAT YOU SAID WAS NO ONE TOLD YOU THAT FACT,

11:00AM 13

OR MR. BALWANI DIDN'T TELL YOU THAT FACT.

11:00AM 14

IS THAT WHAT YOU SAID THIS MORNING?

11:00AM 15

A. YES.

11:00AM 16

Q. NOW, IF WE TAKE A LOOK BACK AT EXHIBIT 1113, THE

11:00AM 17

ANNOUNCEMENT THAT YOU SAID YOU SAW, WOULD YOU TAKE A LOOK AT

11:00AM 18

THAT FIRST PARAGRAPH.

11:00AM 19

AND YOU SEE IN THE MIDDLE OF THAT FIRST PARAGRAPH THE

11:00AM 20

ANNOUNCEMENT SAYS, "AS THE SERVICE BECOMES AVAILABLE THROUGH

11:00AM 21

THERANOS WELLNESS CENTERS INSIDE WALGREENS STORES, CONSUMERS

11:00AM 22

WILL BE ABLE TO ACCESS LESS INVASIVE AND MORE AFFORDABLE

11:00AM 23

CLINICIAN-DIRECTED LAB TESTING."

11:01AM 24

DO YOU SEE THAT?

11:01AM 25

A. YES.

11:01AM 1 Q. AND THEN IT CONTINUES.

11:01AM 2 "FROM A BLOOD SAMPLE AS SMALL AS A FEW DROPS, OR 1/1,000

11:01AM 3 THE SIZE OF A TYPICAL BLOOD DRAW."

11:01AM 4 DO YOU SEE THAT?

11:01AM 5 A. YES.

11:01AM 6 Q. AND THEN IT SAYS, "THE SAMPLES ARE EITHER TAKEN FROM A

11:01AM 7 TINY FINGERSTICK OR A MICRO-SAMPLE TAKEN FROM TRADITIONAL

11:01AM 8 METHODS, ELIMINATING THE NEED FOR LARGER NEEDLES."

11:01AM 9 DO YOU SEE THAT?

11:01AM 10 A. YES.

11:01AM 11 Q. AND NOW, YOU UNDERSTOOD AT THE TIME IN THIS 2013 TIME

11:01AM 12 PERIOD THAT TRADITIONAL TESTING METHODS MEANS A VEIN DRAW;

11:01AM 13 CORRECT?

11:01AM 14 A. YES.

11:01AM 15 Q. NOW, I THINK YOU ALSO MENTIONED IN YOUR TESTIMONY THIS

11:01AM 16 MORNING THAT YOU WERE UNAWARE OF THE FACT THAT THERANOS, I

11:01AM 17 THINK THERE WERE SOME RUMORS -- LET ME BACK UP.

11:01AM 18 YOU HAD SOME QUESTIONS FOR MR. BALWANI ABOUT RUMORS AND

11:02AM 19 QUESTIONS THAT YOU HAD HEARD ABOUT THERANOS SHIPPING SAMPLES TO

11:02AM 20 A CENTRAL LAB AND TAKING, LIKE, 24 OR 48 HOURS TO REPORT

11:02AM 21 RESULTS.

11:02AM 22 DO YOU REMEMBER THAT?

11:02AM 23 A. YES.

11:02AM 24 Q. AND I THINK YOU SAID YOU WERE UNAWARE OF THAT FACT;

11:02AM 25 CORRECT?

11:02AM 1

A. YES.

11:02AM 2

Q. AND THAT'S WHY YOU WERE ASKING QUESTIONS? YOU DIDN'T KNOW

11:02AM 3

IF IT WAS TRUE? YOU KIND OF DIDN'T KNOW ONE WAY OR THE OTHER?

11:02AM 4

A. YES.

11:02AM 5

Q. NOW RETURNING BACK TO EXHIBIT 1113, THE PUBLIC

11:02AM 6

ANNOUNCEMENT OF THE RELATIONSHIP WITH WALGREENS AND THIS KIND

11:02AM 7

OF PARTNERSHIP TO OFFER BLOOD TESTING.

11:02AM 8

AND ON PAGE 2, THAT SECOND FULL PARAGRAPH, AROUND THE

11:02AM 9

MIDDLE OF THE PARAGRAPH TO THE BOTTOM STARTING "THERANOS

11:02AM 10

SEAMLESSLY."

11:02AM 11

DO YOU SEE THAT?

11:02AM 12

A. YES.

11:02AM 13

Q. AND SO THE ANNOUNCEMENT BY WALGREENS AND THERANOS HERE

11:02AM 14

REPORTS, "THERANOS SEAMLESSLY INTEGRATES WITH EXISTING PRACTICE

11:02AM 15

WORK FLOWS AND OFFERS A FULL SPECTRUM OF LABORATORY TESTS, FROM

11:03AM 16

THE MOST COMMON PANELS TO HIGHLY SPECIALIZED TESTS."

11:03AM 17

DO YOU SEE THAT?

11:03AM 18

A. YES.

11:03AM 19

Q. AND THEN IT CONTINUES.

11:03AM 20

"COLLECTION FOR THERANOS TESTS WILL BE PERFORMED IN

11:03AM 21

THERANOS WELLNESS CENTERS BY LICENSED PHLEBOTOMISTS OR

11:03AM 22

APPROPRIATELY STATE CERTIFIED PERSONNEL."

11:03AM 23

DO YOU SEE THAT?

11:03AM 24

A. YES.

11:03AM 25

Q. AND SO THE ANNOUNCEMENT REFERENCES COLLECTING SAMPLES

11:03AM 1 WITHIN THE STORES; CORRECT?

11:03AM 2 A. YES.

11:03AM 3 Q. BUT IT DOESN'T SAY THAT THEY'RE PERFORMING THE ANALYSIS IN

11:03AM 4 THE STORE; CORRECT?

11:03AM 5 A. YES.

11:03AM 6 Q. OKAY. NOW, YOU HAD SOME EXPERIENCE INVESTING IN MEDICAL

11:03AM 7 TECHNOLOGY COMPANIES, PHARMACEUTICAL COMPANIES, LAB TESTING,

11:03AM 8 ANY OF THAT BY 2013?

11:03AM 9 A. I HAD INVESTED IN FREESTANDING EMERGENCY ROOMS.

11:03AM 10 Q. IN THE TIME PERIOD OF 2013, DID YOU UNDERSTAND THAT FOR

11:03AM 11 THERANOS TO PUT ITS DEVICE IN A WALGREENS STORE TO DO THE

11:03AM 12 ACTUAL TESTING, THEY NEEDED TO HAVE FDA APPROVAL TO ACTUALLY

11:04AM 13 PLACE THE DEVICE IN STORE TO TEST.

11:04AM 14 DID YOU UNDERSTAND THAT?

11:04AM 15 MR. BOSTIC: CALLS FOR A LEGAL CONCLUSION.

11:04AM 16 MR. CAZARES: I'M JUST ASKING FOR HIS UNDERSTANDING.

11:04AM 17 THE COURT: ARE YOU ASKING HIM IF HE KNEW ABOUT ANY

11:04AM 18 REGULATION ABOUT THAT?

11:04AM 19 WHY DON'T YOU REPHRASE IT?

11:04AM 20 MR. CAZARES: SURE.

11:04AM 21 Q. MR. MENDENHALL, DID YOU HAVE ANY KNOWLEDGE OR

11:04AM 22 UNDERSTANDING RELATING TO FDA REGULATIONS REGARDING WHEN,

11:04AM 23 WHERE, AND HOW A MEDICAL DEVICE LIKE THERANOS BLOOD ANALYZER

11:04AM 24 COULD BE USED?

11:04AM 25 A. I DID NOT HAVE KNOWLEDGE OF REGULATORY REQUIREMENTS.

11:04AM 1 Q. FAIR ENOUGH.

11:04AM 2 BUT YOU WERE AWARE AT SOME POINT IN TIME, WHETHER IT WAS

11:04AM 3 BEFORE YOU INVESTED OR AFTER, THAT THERANOS INTENDED TO SEEK

11:04AM 4 FDA APPROVAL; CORRECT?

11:04AM 5 A. YES.

11:04AM 6 Q. BECAUSE ULTIMATELY IT HAPPENED; RIGHT?

11:04AM 7 A. I BELIEVE THEY DID SEEK FDA APPROVAL.

11:04AM 8 Q. OKAY. AND YOU RECEIVED AN ANNOUNCEMENT THAT THEY OBTAINED

11:04AM 9 THE APPROVAL; CORRECT?

11:04AM 10 A. I BELIEVE SO, YES.

11:04AM 11 Q. OKAY. AND THE ANNOUNCEMENT AT 1113 CONTINUES, ON THAT

11:05AM 12 SECOND PAGE NEAR THE BOTTOM, "AS THE NATION'S LARGEST RETAIL

11:05AM 13 PHARMACY CHAIN WITH MORE THAN 8,100 NEIGHBORHOOD PHARMACIES,

11:05AM 14 WALGREENS HAS THE INFRASTRUCTURE TO HELP BRING THERANOS TO

11:05AM 15 CONSUMERS NATIONWIDE."

11:05AM 16 DO YOU SEE THAT?

11:05AM 17 A. YES.

11:05AM 18 Q. AND YOU BELIEVED THAT WAS TRUE AT THE TIME; CORRECT?

11:05AM 19 A. YES.

11:05AM 20 Q. YOU CAN SET THAT ASIDE.

11:05AM 21 YOUR HONOR, I BELIEVE 1106 IS ALSO IN EVIDENCE. MAY I

11:05AM 22 PUBLISH?

11:05AM 23 THE COURT: YES.

11:05AM 24 BY MR. CAZARES:

11:05AM 25 Q. AND DO YOU SEE, MR. MENDENHALL, 1106 IS THAT

11:05AM 1 "WALL STREET JOURNAL" ARTICLE THAT YOU REFERENCED THAT YOU
11:05AM 2 INDICATED THAT YOU SAW AND KIND OF GENERATED SOME EXCITEMENT ON
11:05AM 3 YOUR BEHALF AS AN INVESTOR IN THE COMPANY; CORRECT?
11:05AM 4 A. YES.
11:05AM 5 Q. AND THE GOVERNMENT REVIEWED SOME OF THIS WITH YOU THIS
11:05AM 6 MORNING; CORRECT?
11:05AM 7 A. YES.
11:05AM 8 Q. OKAY. AND AGAIN, JUST TO CONFIRM, YOU REVIEWED THE
11:06AM 9 ARTICLE BACK WHEN IT WAS PUBLISHED AROUND THIS TIME?
11:06AM 10 A. YES, I READ IT.
11:06AM 11 Q. OKAY. NOW, THE GOVERNMENT POINTED OUT A PARAGRAPH TO YOU
11:06AM 12 AT THE FOURTH PARAGRAPH BEGINNING "THE SECRET."
11:06AM 13 DO YOU SEE THAT?
11:06AM 14 A. YES.
11:06AM 15 Q. AND IT SAYS, "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE
11:06AM 16 NOW REFINING INVOLVES DEVICES THAT AUTOMATE AND MINIATURIZE
11:06AM 17 MORE THAN 1,000 LABORATORY TESTS, FROM ROUTINE BLOOD WORK TO
11:06AM 18 ADVANCED GENETIC ANALYSES."
11:06AM 19 DO YOU SEE THAT?
11:06AM 20 A. YES.
11:06AM 21 Q. NOW, THE ARTICLE DESCRIBES REFINING THE DEVICES.
11:06AM 22 DO YOU SEE THAT?
11:06AM 23 A. YES.
11:06AM 24 Q. I THINK IN YOUR TESTIMONY THIS MORNING IN QUESTION -- IN
11:06AM 25 RESPONSE TO QUESTIONS FROM THE GOVERNMENT ABOUT YOUR

11:06AM 1 UNDERSTANDING OF HOW YOUR MONEY WOULD BE USED, THE 2013

11:06AM 2 INVESTOR MONEY, YOU HAD A SENSE AND UNDERSTANDING FROM

11:07AM 3 MR. BALWANI THAT THE SCIENCE OF THE TECHNOLOGY WAS COMPLETE, IT

11:07AM 4 WAS DONE?

11:07AM 5 A. YEAH, THE SCIENCE AND THE TECHNOLOGY, YES.

11:07AM 6 Q. OKAY. AND YOU TOLD THE JURY HERE THIS MORNING THAT THAT

11:07AM 7 CAME FROM MR. BALWANI; CORRECT?

11:07AM 8 A. YES.

11:07AM 9 Q. OKAY. THAT SAID, YOU, AS A SOPHISTICATED INVESTOR,

11:07AM 10 UNDERSTAND COMPANIES ARE ALWAYS TRYING TO IMPROVE AND PERFECT

11:07AM 11 THEIR PRODUCTS AND THEIR TECHNOLOGY; CORRECT?

11:07AM 12 A. I, I WOULD BELIEVE SO. I MEAN, THAT'S -- I WOULD THINK

11:07AM 13 THAT IF YOU CAN IMPROVE IT, YOU WOULD.

11:07AM 14 Q. AND IF YOU HAD AN IPHONE 6 TO AN IPHONE 12, GREAT DEVICE

11:07AM 15 HERE, BUT NOT CLOSE TO THE DEVICE THAT YOU HAD YEARS LATER;

11:07AM 16 CORRECT?

11:07AM 17 A. UNDERSTOOD.

11:07AM 18 Q. AND YOU WOULD -- YOU EXPECTED THERANOS TO CONTINUE TO

11:07AM 19 PERFECT ITS TECHNOLOGY; CORRECT?

11:07AM 20 A. I WAS JUST HAPPY THAT THEY HAD THE TECHNOLOGY DONE, YES.

11:07AM 21 Q. OKAY. AND YOU ALSO WOULD HAVE EXPECTED THERANOS TO USE

11:08AM 22 INVESTOR MONEY TO PERFORM RESEARCH AND DEVELOPMENT, TO PERFECT

11:08AM 23 ITS TECHNOLOGY TOWARDS THE GOAL OF FDA APPROVAL.

11:08AM 24 YOU THOUGHT THAT WAS APPROPRIATE; CORRECT?

11:08AM 25 A. YES. IT'S NOT NECESSARILY WHAT I WAS TOLD, BUT, YES, IF

11:08AM 1 THAT'S WHAT THEY THOUGHT THEY NEEDED TO DO TO IMPROVE THE
11:08AM 2 COMPANY. BUT I WAS TOLD IT WAS FOR MARKETING AND
11:08AM 3 MANUFACTURING.

11:08AM 4 Q. AND YOU BECAME AWARE OF THE FACT THAT AFTER YOU INVESTED,
11:08AM 5 THERANOS DID EXPAND ITS BUSINESS; CORRECT?

11:08AM 6 A. WELL, THEY WERE TRYING TO ROLL OUT TO WALGREENS IS WHAT I
11:08AM 7 UNDERSTOOD.

11:08AM 8 Q. AND THEY WENT FROM JUST A FEW STORES IN 2013 WHEN YOU
11:08AM 9 INVESTED WITH YOUR FRIENDS AND FAMILY, TO MANY MORE STORES --

11:08AM 10 A. YES.

11:08AM 11 Q. -- THE NEXT YEAR; CORRECT?

11:08AM 12 A. YES, I BELIEVE SO.

11:08AM 13 Q. AND AS A PART OF THAT, YOU UNDERSTOOD THAT THERANOS WAS
11:08AM 14 MARKETING ITS BUSINESS; CORRECT?

11:09AM 15 A. YEAH, THEY WERE EXPANDING.

11:09AM 16 Q. AND THAT WAS AN APPROPRIATE USE OF FUNDS; CORRECT?

11:09AM 17 A. YEAH.

11:09AM 18 Q. AND IN ADDITION TO USING FUNDS IN THAT MANNER, YOU
11:09AM 19 UNDERSTOOD THAT MS. HOLMES AND MR. BALWANI HAD OBLIGATIONS TO
11:09AM 20 YOU AS INVESTORS, AND TO ALL INVESTORS, TO USE INVESTOR MONEY
11:09AM 21 AS THEY SAW BEST TO GROW THE BUSINESS FOR INVESTORS; CORRECT?

11:09AM 22 A. YES.

11:09AM 23 Q. THAT'S WHAT YOU EXPECTED; RIGHT?

11:09AM 24 A. YES.

11:09AM 25 Q. AND SO THE FACT THAT THERANOS MAY HAVE BEEN REFINING ITS

11:09AM 1 TECHNOLOGY IN 2013 AND 2014, THERE'S NOTHING WRONG WITH THAT;
11:09AM 2 CORRECT?

11:09AM 3 A. YEAH. IT'S DIFFERENT THAN WHAT I WAS TOLD. YOU KNOW, IT
11:09AM 4 WAS -- I MEAN, THE ARTICLE IS DIFFERENT THAN BEING TOLD
11:09AM 5 DIRECTLY FROM THE PRESIDENT AND CHIEF OPERATING OFFICER OF THE
11:09AM 6 COMPANY THAT THEY WERE DONE WITH THE TECHNOLOGY.

11:09AM 7 I WOULD HAVE HAD NO KNOWLEDGE ON WHETHER THEY NEEDED TO
11:09AM 8 REFINE IT FOR ANY SPECIFIC REASON. I JUST REMEMBER WHAT I WAS
11:09AM 9 TOLD.

11:09AM 10 Q. AND TO THE EXTENT THAT THE TECHNOLOGY WAS DONE IN LATE
11:09AM 11 2013 AND 2014 AND THAT SAME TECHNOLOGY WAS THE TECHNOLOGY USED
11:10AM 12 TO GET FDA APPROVAL, THAT'S WHAT YOU WOULD HAVE EXPECTED TO
11:10AM 13 HAVE HAPPEN; CORRECT?

11:10AM 14 A. YES.

11:10AM 15 Q. THE TECHNOLOGY THAT THEY HAD IN LATE 2013, 2014, WAS DONE
11:10AM 16 OR COMPLETE AND USED TO GET FDA APPROVAL. THAT WAS -- THAT
11:10AM 17 COINCIDED WITH YOUR UNDERSTANDING; RIGHT?

11:10AM 18 A. YES.

11:10AM 19 Q. IS IT -- AM I CORRECT THAT YOU NEVER YOURSELF WENT AND
11:10AM 20 KIND OF TESTED OUT THERANOS'S BLOOD TESTING PRIOR TO INVESTING;
11:11AM 21 IS THAT RIGHT?

11:11AM 22 A. CORRECT.

11:11AM 23 Q. BECAUSE YOU LIVED IN HOUSTON AND THEY WERE IN PALO ALTO,
11:11AM 24 SO --

11:11AM 25 A. YEAH.

11:11AM 1 Q. -- IT WAS A LITTLE INCONVENIENT; RIGHT?

11:11AM 2 A. YES.

11:11AM 3 Q. AND THERE MAY HAVE BEEN A FEW STORES IN ARIZONA, BUT THAT

11:11AM 4 STILL IS NOT CONVENIENT FROM HOUSTON?

11:11AM 5 A. YES.

11:11AM 6 Q. OKAY. BUT PRIOR TO YOUR INVESTMENT IN DECEMBER, LATE 2013

11:11AM 7 AND EARLY 2014 I GUESS IS WHEN THE FUNDS WERE ACTUALLY

11:11AM 8 SUBMITTED, YOU -- I THINK YOU SAID YOU KNEW OF THE WEBSITE;

11:11AM 9 CORRECT?

11:11AM 10 A. YES.

11:11AM 11 Q. AND YOU VISITED THE WEBSITE?

11:11AM 12 A. YES.

11:11AM 13 Q. REVIEWED IT?

11:11AM 14 A. YES.

11:11AM 15 Q. PRIOR TO INVESTING?

11:11AM 16 A. I'M NOT SURE OF THE TIMING, BUT I DID -- I HAVE REVIEWED

11:11AM 17 THE WEBSITE.

11:11AM 18 Q. OKAY. IT WOULD HAVE BEEN YOUR HABIT, THOUGH, TO LOOK AT

11:11AM 19 WHATEVER PUBLIC INFORMATION WAS AVAILABLE PRIOR TO RECOMMENDING

11:11AM 20 FRIENDS AND FAMILY INVEST IN THERANOS; CORRECT?

11:11AM 21 A. YES. THERE WAS A BUNCH OF INFORMATION COMING OUT. I JUST

11:12AM 22 DON'T KNOW WHEN THE WEBSITE WAS LIVE, IF IT WAS LIVE BEFORE OR

11:12AM 23 AFTER I INVESTED.

11:12AM 24 Q. IF IT WAS LIVE, YOU LOOKED AT IT?

11:12AM 25 A. SURE.

11:12AM 1 Q. IF YOU COULD TAKE A LOOK AT EXHIBIT 5805. I THINK YOU
11:12AM 2 LOOKED AT IT ALREADY THIS MORNING. IT'S IN EVIDENCE.

11:12AM 3 AND WE CAN JUST PUT IT UP ON THE SCREEN.

11:12AM 4 AGAIN, THIS RESEMBLES THE WEBSITE AS YOU SAW IT BACK IN
11:12AM 5 2013, 2014?

11:12AM 6 A. OKAY. YEAH, I'VE SEEN IT.

11:12AM 7 Q. OKAY. AND IF YOU TAKE A LOOK -- THE GOVERNMENT REVIEWED A
11:12AM 8 FEW PASSAGES WITH YOU THIS MORNING; CORRECT?

11:12AM 9 A. YES.

11:12AM 10 Q. AND IF YOU TAKE A LOOK AT PAGE 2 ON THE WEBSITE THAT YOU
11:12AM 11 REVIEWED, NEAR THE MIDDLE, AND IT'S A LITTLE HARD TO READ, BUT
11:12AM 12 IF WE CAN BLOW THAT UP.

11:12AM 13 AMONG THE STATEMENTS IN THE WEBSITE MADE TO EVERYBODY, THE
11:12AM 14 PUBLIC, PATIENTS, INVESTORS, AND OTHERS, THE WEBSITE REPORTS,
11:12AM 15 "GOODBYE, BIG BAD NEEDLE."

11:13AM 16 DO YOU SEE THAT?

11:13AM 17 A. YES.

11:13AM 18 Q. AND IT SAYS, "INSTEAD OF A HUGE NEEDLE, WE CAN USE A TINY
11:13AM 19 FINGERSTICK OR COLLECT A MICRO-SAMPLE FROM A VENOUS DRAW."

11:13AM 20 DO YOU SEE THAT?

11:13AM 21 A. YES.

11:13AM 22 Q. "IT'S PRACTICALLY PAINLESS AND A LOT LESS SCARY. IN FACT,
11:13AM 23 WE'VE MADE THE ENTIRE LAB TESTING PROCESS COMFORTABLE,
11:13AM 24 ACCOMMODATING, AND LESS INTIMIDATING -- FOR PEOPLE BIG AND
11:13AM 25 SMALL."

11:13AM 1 DID I READ THAT RIGHT?

11:13AM 2 A. YES.

11:13AM 3 Q. AND AGAIN, YOU UNDERSTAND THAT VENOUS DRAW IS A
11:13AM 4 TRADITIONAL VEIN DRAW USED IN BLOOD TESTING FOR DECADES; RIGHT?

11:13AM 5 A. YES.

11:13AM 6 Q. BUT YOU YOURSELF, IN YOUR OWN MIND, WERE KIND OF UNAWARE
11:13AM 7 OF THE FACT THAT THERANOS WAS USING VENOUS DRAW TESTING IN
11:13AM 8 CONJUNCTION WITH ITS FINGERSTICK TESTING; CORRECT?

11:13AM 9 A. YES.

11:13AM 10 Q. BUT YOU DID LOOK AT THE WEBSITE BEFORE YOU INVESTED?

11:13AM 11 A. YES.

11:13AM 12 Q. NOW, THAT ARTICLE THAT WE SAW, THE RAGO "WALL STREET
11:14AM 13 JOURNAL" ARTICLE THAT YOU LOOKED AT, THERE WAS A REFERENCE TO
11:14AM 14 1,000 TESTS WERE BEING REFINED I THINK WAS THE WORD.

11:14AM 15 DO YOU REMEMBER THAT?

11:14AM 16 A. YES.

11:14AM 17 Q. AND I THINK YOU TESTIFIED THAT YOU HAD SOME UNDERSTANDING
11:14AM 18 THAT THERANOS COULD PERFORM A LOT OF TESTS WITH ITS TECHNOLOGY;
11:14AM 19 CORRECT?

11:14AM 20 A. YES.

11:14AM 21 Q. AND MR. BALWANI DIDN'T TELL YOU IN ANY COMMUNICATION THAT
11:14AM 22 YOU HAD WITH HIM THAT EVERY TEST THERANOS OFFERED WAS BEING
11:14AM 23 TESTED USING ITS OWN PROPRIETARY DEVICE; CORRECT?

11:14AM 24 A. HE DID NOT SAY THAT, NO. YOU'RE RIGHT, HE DID NOT TELL ME
11:14AM 25 THAT.

11:14AM 1 HE JUST TOLD ME THAT THEY COULD DO 60 TO 70 TESTS.

11:14AM 2 Q. THE CAPABILITIES OF THE TECHNOLOGY IS WHAT HE TOLD YOU;

11:14AM 3 RIGHT?

11:14AM 4 A. YES, I BELIEVE SO.

11:14AM 5 Q. WHAT IT WAS CAPABLE OF DOING?

11:14AM 6 A. YES.

11:14AM 7 Q. AND LOOKING BACK AT THE WEBSITE AT EXHIBIT 5805, YOU SEE

11:15AM 8 THERE'S A MENU STARTING AFTER PAGE 6 -- DO I HAVE IT RIGHT?

11:15AM 9 YEAH. ONE, TWO, THREE, FOUR, FIVE -- THAT'S IT. ABOUT FIVE

11:15AM 10 PAGES OF LISTS OF TESTS AND A PRICE.

11:15AM 11 DO YOU SEE THAT?

11:15AM 12 A. YES.

11:15AM 13 Q. AND YOU WERE GENERALLY AWARE OF THE MENU. YOU SAW THAT?

11:15AM 14 A. I'VE SEEN IT, YEAH.

11:15AM 15 Q. OKAY. BACK IN 2013?

11:15AM 16 A. I SAW IT, YEAH.

11:15AM 17 Q. OKAY. AND I'M NOT GOING TO ASK YOU TO COUNT BECAUSE IT'S

11:15AM 18 A LOT OF TESTS, BUT IF YOU FLIP THROUGH THESE PAGES HERE,

11:15AM 19 YOU'RE LOOKING AT A COUPLE HUNDRED TESTS; CORRECT?

11:15AM 20 A. YES.

11:15AM 21 Q. AND SO WHEN YOU INVESTED IN 2013, OR LED YOUR FRIENDS AND

11:15AM 22 FAMILY TO INVEST, YOU DIDN'T HAVE IN YOUR MIND, WELL, THERANOS

11:15AM 23 WAS OFFERING A THOUSAND TESTS ON ITS FINGERSTICK TESTING TO THE

11:15AM 24 PUBLIC; CORRECT?

11:15AM 25 A. CORRECT.

11:15AM 1 Q. BUT YOU UNDERSTOOD IT HAD THE POTENTIAL. THAT WAS THE
11:15AM 2 WHOLE POINT; RIGHT?

11:15AM 3 A. I BELIEVE SO, YEAH. I KNEW, I KNEW 60 TO 70 I WAS PRETTY
11:16AM 4 IMPRESSED WITH.

11:16AM 5 Q. OKAY. GETTING BACK TO THIS 2013 TIME PERIOD.

11:16AM 6 SO YOU SAW THE PUBLIC ANNOUNCEMENTS OF THE WALGREENS
11:16AM 7 RELATIONSHIP AND THE RAGO ARTICLE, "THE WALL STREET JOURNAL"
11:16AM 8 ARTICLE; RIGHT?

11:16AM 9 A. YES.

11:16AM 10 Q. AND YOU DID YOUR OWN KIND OF INQUIRY ON WHATEVER WAS
11:16AM 11 PUBLICLY AVAILABLE, INCLUDING ON THE WEBSITE; RIGHT?

11:16AM 12 A. YES.

11:16AM 13 Q. AND THEN WERE YOU SPEAKING TO DAVID HARRIS AT THE TIME?

11:16AM 14 A. I BELIEVE SO, YES.

11:16AM 15 Q. AND WAS HE PROVIDING YOU OTHER INFORMATION?

11:16AM 16 A. NOT THAT I'M AWARE OF. NOT THAT I CAN RECALL, I SHOULD
11:16AM 17 SAY.

11:16AM 18 Q. FAIR ENOUGH.

11:16AM 19 AND THEN YOU RECEIVED THAT NOTICE FROM THE COMPANY ABOUT
11:16AM 20 GETTING CONSENTS BECAUSE THEY WERE DOING A 5-TO-1 SPLIT AND YOU
11:17AM 21 UNDERSTOOD THAT TO MEAN, WELL, THEY'RE GOING TO GET SOME
11:17AM 22 ADDITIONAL FINANCING IN THE NEXT YEAR; CORRECT?

11:17AM 23 A. YES.

11:17AM 24 Q. AND THAT TRIGGERED YOUR INTEREST IN EXPLORING A NEW
11:17AM 25 INVESTMENT; CORRECT?

11:17AM 1 A. YES.

11:17AM 2 Q. AND YOU FOLLOWED UP TO TRY TO MAKE IT HAPPEN; CORRECT?

11:17AM 3 A. YES.

11:17AM 4 Q. NOW, PRIOR TO SPEAKING WITH MR. BALWANI IN DECEMBER OF

11:17AM 5 2013, DO YOU RECALL HAVING A DISCUSSION WITH AN ATTORNEY AT

11:17AM 6 THERANOS ABOUT THIS OPPORTUNITY TO INVEST?

11:17AM 7 A. YES.

11:17AM 8 Q. OKAY. AND IN THAT DISCUSSION YOU HAD WITH THE ATTORNEY,

11:18AM 9 DID YOU ESSENTIALLY EXPRESS JUST THAT, YOU WERE INTERESTED IN

11:18AM 10 INVESTING, YOU AND YOUR FRIENDS?

11:18AM 11 A. YES, YES. WE WERE INTERESTED IN GETTING MORE INVOLVED AND

11:18AM 12 INVESTING.

11:18AM 13 Q. AND THAT WAS DUE IN PART TO SOME OF WHAT WE HAVE ALREADY

11:18AM 14 TALKED ABOUT, THE WALGREENS RELATIONSHIP?

11:18AM 15 A. YES.

11:18AM 16 Q. AND THE MEDIA COVERAGE AND "THE WALL STREET JOURNAL"?

11:18AM 17 A. YES.

11:18AM 18 Q. THE WEBSITE, THE FACT THAT THEY WERE GOING PUBLIC NOW WITH

11:18AM 19 THE BUSINESS?

11:18AM 20 A. YES.

11:18AM 21 Q. NOW, IN THAT DISCUSSION -- DO YOU RECALL ENTIRELY WHAT YOU

11:18AM 22 DISCUSSED WITH THE ATTORNEY?

11:18AM 23 A. SOME OF IT.

11:18AM 24 Q. OKAY. AND IN THAT DISCUSSION WITH THE ATTORNEY, DID YOU

11:18AM 25 EXPRESS A DESIRE OR AN INTEREST IN EVEN HELPING THE COMPANY

11:18AM 1 RAISE MONEY?

11:18AM 2 A. YES.

11:18AM 3 Q. BECAUSE THAT'S -- IN SOME WAYS, THAT'S PART OF THE

11:18AM 4 BUSINESS OF U.S. CAPITAL; RIGHT?

11:18AM 5 A. YES, YES.

11:18AM 6 Q. YOU HAVE EXPERIENCE DOING FUND RAISING, PRIVATE FINANCING,

11:18AM 7 PRIVATE OFFERINGS, THAT SORT OF THING; CORRECT?

11:18AM 8 A. YES, WE DID.

11:19AM 9 Q. AND AS PART OF THAT CONVERSATION WITH THE ATTORNEY, AGAIN,

11:19AM 10 YOU TOLD HER OR EXPRESSED TO HER THAT YOU AND YOUR FRIENDS OR

11:19AM 11 FAMILY WERE INTERESTED IN INVESTING; CORRECT?

11:19AM 12 A. YES.

11:19AM 13 Q. AND DO YOU RECALL TELLING THE ATTORNEY THAT YOU WERE KIND

11:19AM 14 OF INTERESTED IN INVESTING REGARDLESS OF WHETHER OR NOT YOU GOT

11:19AM 15 FINANCIAL INFORMATION OR DETAILS?

11:19AM 16 A. I DON'T, I DON'T RECALL SPECIFICALLY WHAT I SAID.

11:19AM 17 I WAS ALWAYS SEEKING AS MUCH INFORMATION AS POSSIBLE.

11:19AM 18 Q. MIGHT IT HELP YOUR RECOLLECTION REGARDING WHAT YOU SAID TO

11:19AM 19 THE ATTORNEY IF YOU SAW SOME NOTES FROM THAT PHONE CALL?

11:19AM 20 A. SURE.

11:19AM 21 Q. OKAY. IF YOU CAN TAKE A LOOK AT EXHIBIT 20594 IN THE

11:19AM 22 BINDER.

11:19AM 23 AND YOU CAN IGNORE THE FIRST PAGE.

11:19AM 24 IF YOU WOULD LOOK AT THE SECOND PAGE, THERE'S SOME TEXTS.

11:20AM 25 AGAIN, WE CAN'T READ THIS TO THE JURY, SO JUST READ IT TO

11:20AM 1 YOURSELF, UNDER WHERE IT SAYS CALL NUMBER 2.

11:20AM 2 DO YOU SEE THAT IN THE MIDDLE OF PAGE 2?

11:20AM 3 A. YES.

11:20AM 4 Q. AND IF YOU LOOK AT THE LAST PARAGRAPH OF THAT PASSAGE

11:20AM 5 BEGINNING ON PAGE 3 BEGINNING YOUR NAME AND THEN REQUESTED.

11:20AM 6 CAN YOU READ THAT PARAGRAPH TO YOURSELF?

11:20AM 7 A. YES.

11:20AM 8 Q. AND LET ME KNOW WHEN YOU'RE DONE.

11:20AM 9 A. YOU WANT ME TO READ THE ONE AT THE BOTTOM OF PAGE 2 OR ON

11:20AM 10 THE --

11:20AM 11 Q. TOP -- JUST THE TOP OF PAGE 3, THAT LAST PARAGRAPH.

11:20AM 12 A. YES, I'M DONE.

11:20AM 13 Q. OKAY. AND DID YOU TELL THE ATTORNEY AT THERANOS, PRIOR TO

11:20AM 14 SPEAKING WITH MR. BALWANI, THAT YOU AND YOUR FRIENDS WERE

11:20AM 15 WILLING TO INVEST IN THERANOS BLINDLY?

11:21AM 16 A. I NEVER SAID "BLINDLY."

11:21AM 17 Q. YOU WERE WILLING TO INVEST WITHOUT GETTING FINANCIAL

11:21AM 18 INFORMATION; CORRECT?

11:21AM 19 A. I ASKED THEM FOR A FINANCIAL UPDATE THEN, TOO.

11:21AM 20 Q. BUT YOU DIDN'T GET A FINANCIAL UPDATE; CORRECT?

11:21AM 21 A. NO.

11:21AM 22 Q. BUT YOU STILL INVESTED?

11:21AM 23 A. MY FIRM DID NOT RAISE CAPITAL FOR -- THIS CONVERSATION IS

11:21AM 24 AROUND MY FIRM RAISING CAPITAL. MY FIRM COULD NEVER RAISE

11:21AM 25 CAPITAL FOR A COMPANY THAT DIDN'T PROVIDE FINANCIALS.

11:21AM 1 BUT I INVESTED PERSONALLY AND MY FRIENDS INVESTED
11:21AM 2 PERSONALLY THROUGH MY PARTNERSHIP.

11:21AM 3 Q. BUT YOU TOLD THE ATTORNEY YOU WERE WILLING TO INVEST
11:21AM 4 BLINDLY FOR YOUR OWN SELF, NOT YOUR CLIENTS' --

11:21AM 5 MR. BOSTIC: OBJECT TO THE QUESTION. HE'S READING
11:21AM 6 FROM A DOCUMENT NOT IN EVIDENCE, AND ALSO ASKED AND ANSWERED.

11:21AM 7 THE COURT: AS TO THAT ONE WORD, THAT WAS ASKED AND
11:22AM 8 ANSWERED.

11:22AM 9 MR. CAZARES: UNDERSTOOD.

11:22AM 10 Q. YOU TOLD THE ATTORNEY THAT YOU WERE WILLING TO INVEST
11:22AM 11 BECAUSE YOU BELIEVED IN THE SIGNIFICANT POTENTIAL OF THERANOS
11:22AM 12 PRIOR TO YOUR DISCUSSIONS WITH MR. BALWANI; CORRECT?

11:22AM 13 A. AT THAT POINT I WAS BELIEVING THAT I WANTED TO INVEST,
11:22AM 14 YES.

11:22AM 15 Q. OKAY.

11:22AM 16 YOUR HONOR, THIS MIGHT BE A GOOD PLACE TO TAKE A BREAK.

11:22AM 17 THE COURT: IF YOU HAVE MORE, WE CAN --

11:22AM 18 MR. CAZARES: I CAN KEEP GOING. I WASN'T SURE WHAT
11:22AM 19 THE COURT WAS INTENDING.

11:22AM 20 THE COURT: LET'S SEE IF WE CAN GO UNTIL NOON.

11:22AM 21 MR. CAZARES: OKAY. I DIDN'T WANT TO STRESS
11:22AM 22 ANYBODY.

11:22AM 23 THE COURT: OKAY. YES.

11:22AM 24 BY MR. CAZARES:

11:22AM 25 Q. YOU CAN SET THAT ASIDE.

11:23AM 1 IF YOU CAN TAKE A LOOK AT EXHIBIT 20593.

11:23AM 2 DO YOU HAVE 20593?

11:23AM 3 A. YES.

11:23AM 4 Q. AND 20593 APPEARS TO BE AN EMAIL EXCHANGE INVOLVING

11:23AM 5 YOURSELF RELATING TO KIND OF THE BREAKDOWN OF THE INVESTMENT BY
11:23AM 6 YOUR FRIENDS AND FAMILY?

11:23AM 7 A. YES.

11:23AM 8 Q. AND IT'S A DOCUMENT THAT YOU PRODUCED IN THE COURSE OF ALL
11:23AM 9 OF THESE INVESTIGATIONS, OR YOUR COMPANY PRODUCED?

11:23AM 10 A. YES, IT'S A DOCUMENT FROM ME INSTRUCTING MY ATTORNEY.

11:24AM 11 MR. CAZARES: YOUR HONOR, MOVE THE ADMISSION OF
11:24AM 12 EXHIBIT 20593.

11:24AM 13 MR. BOSTIC: NO OBJECTION.

11:24AM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:24AM 15 (DEFENDANT'S EXHIBIT 20593 WAS RECEIVED IN EVIDENCE.)

11:24AM 16 BY MR. CAZARES:

11:24AM 17 Q. AND FOCUSING ON THE TOP PORTION OF THE MESSAGE, THIS IS
11:24AM 18 FEBRUARY 24TH, 2014.

11:24AM 19 DO YOU SEE THAT?

11:24AM 20 A. YES.

11:24AM 21 Q. AND THIS IS AFTER YOU AND YOUR FRIENDS AND FAMILY HAD
11:24AM 22 FUNDED THE INVESTMENT; CORRECT?

11:24AM 23 A. YES.

11:24AM 24 Q. AND IN THE MESSAGE YOU'RE PROVIDING KIND OF A BREAKDOWN OF
11:24AM 25 THE INVESTORS IN THERANOS; CORRECT?

11:24AM 1 A. YES.

11:24AM 2 Q. AND THAT FIRST INDIVIDUAL, RICHARD AAB?

11:24AM 3 A. YES.

11:24AM 4 Q. AM I SAYING THAT RIGHT?

11:24AM 5 A. YES.

11:24AM 6 Q. HE PROVIDED MOST OR THE MAJORITY OF THE FUNDS FOR THAT

11:24AM 7 \$1.3 MILLION INVESTMENT; CORRECT?

11:24AM 8 A. YES, \$750,000.

11:24AM 9 Q. OKAY. AND MR. AAB LEARNED ABOUT THERANOS -- FIRST HE

11:25AM 10 LEARNED ABOUT YOUR RELATIONSHIP OR PARTICIPATION IN THERANOS;

11:25AM 11 CORRECT?

11:25AM 12 A. YES.

11:25AM 13 Q. YOU HAD DISCUSSED THAT WITH HIM IN THE PAST?

11:25AM 14 A. YES.

11:25AM 15 Q. BUT IN THIS TIME PERIOD WHEN YOU WERE INVESTING, MR. AAB

11:25AM 16 WAS STAYING WITH YOU AT YOUR HOME ONE TIME; CORRECT?

11:25AM 17 A. YES.

11:25AM 18 Q. AND SAW SOME DOCUMENTS OR SOMETHING ABOUT THERANOS?

11:25AM 19 A. YES.

11:25AM 20 Q. AND TOLD YOU HE WANTED TO INVEST?

11:25AM 21 A. YES.

11:25AM 22 Q. AND THAT WAS BEFORE YOU REPORTED TO HIM ANYTHING THAT

11:25AM 23 MR. BALWANI HAD TO SAY; CORRECT?

11:25AM 24 A. UM, I'M NOT, I'M NOT QUITE SURE OF THE SEQUENCING.

11:25AM 25 Q. WHEN MR. AAB TOLD YOU HE WANTED TO INVEST, YOU HAD NO

11:25AM 1 FINANCIAL STATEMENTS TO THERANOS; CORRECT?

11:25AM 2 A. CORRECT.

11:25AM 3 Q. NO PROSPECTUS; CORRECT?

11:25AM 4 A. I HAD OFFERING DOCUMENTS I BELIEVE, YES.

11:25AM 5 Q. AND OFFERING DOCUMENTS BEING THE SIGNATURE PAGES OF THE

11:25AM 6 FINAL AGREEMENTS?

11:25AM 7 A. I'M NOT, I'M NOT -- I DON'T RECALL, BUT HE SAW THEM IN MY

11:25AM 8 HOME AND ASKED IF HE COULD READ THEM, AND I LET HIM.

11:26AM 9 Q. AND THEN HE TOLD YOU HE WANTED TO INVEST?

11:26AM 10 A. YES.

11:26AM 11 Q. BASED ON READING THE OFFERING DOCUMENTS?

11:26AM 12 A. WELL, BASED ON HIS KNOWLEDGE AND WHAT HE HAD HEARD ABOUT

11:26AM 13 THERANOS.

11:26AM 14 Q. AND YOU'RE NOT AWARE OF ANY COMMUNICATIONS BETWEEN MR. AAB

11:26AM 15 AND MR. BALWANI; CORRECT?

11:26AM 16 A. CORRECT.

11:26AM 17 Q. OR ANY OF THE OTHER INVESTORS LISTED HERE IN

11:26AM 18 EXHIBIT 20593?

11:26AM 19 A. CORRECT.

11:26AM 20 Q. YOU CAN SET THAT ASIDE.

11:26AM 21 IF YOU COULD PUT UP ON THE SCREEN EXHIBIT 4059, WHICH IS

11:27AM 22 ALREADY IN EVIDENCE.

11:27AM 23 NOW, MR. MENDENHALL, DO YOU SEE UP ON THE SCREEN, THESE

11:27AM 24 ARE YOUR NOTES; CORRECT?

11:27AM 25 A. YES.

11:27AM 1 Q. AND I THINK YOU DESCRIBED YOURSELF AS A HABITUAL
11:27AM 2 NOTE-TAKER; CORRECT?

11:27AM 3 A. I TAKE NOTES, YES.

11:27AM 4 Q. YOU TAKE DETAILED AND SPECIFIC NOTES WERE YOUR WORDS THIS
11:27AM 5 MORNING; CORRECT?

11:27AM 6 A. YEAH, SPECIFICALLY WHEN I'M TALKING TO A LEADERSHIP OF
11:27AM 7 COMPANIES THAT WE'RE INVESTING IN, YES, PUBLIC AND PRIVATE
11:27AM 8 COMPANIES.

11:27AM 9 Q. AND I THINK YOU DESCRIBED THIS MORNING THAT YOU HUNG UP ON
11:27AM 10 THE PHONE WITH MR. BALWANI, TOOK YOUR HANDWRITTEN NOTES, AND
11:27AM 11 THEN TRANSMITTED THEM INTO A TYPEWRITTEN DOCUMENT; IS THAT
11:27AM 12 RIGHT?

11:27AM 13 A. YES.

11:27AM 14 Q. AND AT THAT TIME YOU KNEW IT WAS IMPORTANT TO BE ACCURATE;
11:27AM 15 CORRECT?

11:27AM 16 A. YES.

11:27AM 17 Q. SO WHILE YOU RECALL THE CONVERSATION WITH MR. BALWANI, THE
11:28AM 18 NOTES THEMSELVES ARE PROBABLY A BETTER INDICATION OF WHAT
11:28AM 19 MR. BALWANI ACTUALLY SAID; CORRECT?

11:28AM 20 A. THESE ARE MY REGURGITATION OF MY NOTES, YES, IN THE EMAIL.

11:28AM 21 Q. BUT CLOSER IN TIME TO THE COMMUNICATION WITH MR. BALWANI;
11:28AM 22 CORRECT?

11:28AM 23 A. YES, I WOULD -- I THINK SO, YES.

11:28AM 24 Q. OKAY. SO THE GOVERNMENT REVIEWED THE NOTES WITH YOU AND
11:28AM 25 ASKED YOU ABOUT A FEW THINGS, AND I WANTED TO REVISIT A FEW OF

11:28AM 1 THE ITEMS.

11:28AM 2 AT NUMBERS 3, 4, AND 5, YOU TOOK DOWN NOTES INDICATING

11:28AM 3 THAT THE SCIENCE BEHIND THERANOS IS COMPLETE.

11:28AM 4 DO YOU SEE THAT?

11:29AM 5 A. YES.

11:29AM 6 Q. AND AGAIN, "NO NEW SCIENCE NEEDED"; CORRECT?

11:29AM 7 A. YES, THAT'S CORRECT.

11:29AM 8 Q. AND "NO NEW INVENTION"; CORRECT?

11:29AM 9 A. YES.

11:29AM 10 Q. AT THE TIME IN DECEMBER OF 2013, WERE YOU AWARE OF THE

11:29AM 11 FACT THAT THERANOS'S 4.0 DEVICE WAS ALREADY DEVELOPED?

11:29AM 12 A. I'M NOT SURE WHAT THE DEVICE WAS CALLED OR WHAT -- HOW IT

11:29AM 13 WAS NUMBERED.

11:29AM 14 MY UNDERSTANDING IS THAT IT WAS, IT WAS DEVELOPED AND

11:29AM 15 FUNCTIONING, YEAH.

11:29AM 16 Q. OKAY. AND YOU HAD NO KNOWLEDGE OR UNDERSTANDING OF ANY

11:29AM 17 LATER DEVICE THAT THERANOS DEVELOPED BEYOND THE 4.0 SERIES THAT

11:29AM 18 THEY HAD AT THE TIME?

11:29AM 19 A. I DON'T KNOW. I KNOW THERE WAS A DEVICE CALLED EDISON,

11:29AM 20 BUT I DON'T KNOW WHAT THAT DEVICE WAS OR THE DIFFERENCE BETWEEN

11:29AM 21 4.0 AND EDISON.

11:29AM 22 I JUST KNEW IT GOT A NAME, THEIR DEVICE GOT A NAME AT SOME

11:30AM 23 POINT.

11:30AM 24 Q. OKAY. BUT YOU DON'T KNOW WHO GAVE IT THAT NAME; CORRECT?

11:30AM 25 A. NO, I DON'T KNOW.

11:30AM 1 Q. OKAY. NOW, YOU ALSO WITH THE GOVERNMENT DISCUSSED ITEM
11:30AM 2 NUMBER 11 IN YOUR NOTES.

11:30AM 3 A. YES, I SEE NUMBER 11. I DON'T KNOW THAT THE GOVERNMENT
11:30AM 4 ASKED ME ANY QUESTIONS ABOUT NUMBER 11.

11:30AM 5 Q. OKAY. UNDER ITEM 11 YOU WROTE, "THEY CAN RUN A FULL BODY
11:30AM 6 RESPONSE TO MEDICATION WITH DROPS IN A DAY."

11:30AM 7 DO YOU SEE THAT?

11:30AM 8 A. YES.

11:30AM 9 Q. AND THAT'S IN RELATION TO KIND OF A PHARMACEUTICAL STUDY;
11:30AM 10 RIGHT?

11:30AM 11 A. I'M NOT SURE WHAT IT'S IN RELATION TO. THAT'S JUST WHAT I
11:30AM 12 WAS TOLD --

11:30AM 13 Q. OKAY.

11:31AM 14 A. -- ABOUT THEIR CAPABILITIES.

11:31AM 15 Q. THAT WOULD MAKE SENSE, RIGHT? A PHARMACEUTICAL COMPANY
11:31AM 16 TESTING THE IMPACT OF ITS MEDICATION ON A PATIENT, HAVING AN
11:31AM 17 ANALYZER THAT COULD MEASURE THAT IMPACT, THAT'S CONSISTENT WITH
11:31AM 18 WHAT MR. BALWANI TOLD YOU; RIGHT?

11:31AM 19 A. YES.

11:31AM 20 Q. AND AGAIN, ITEM 12 IN THE NOTES, YOU WROTE, "CURRENT
11:31AM 21 CLINICAL TRIALS TAKE 6 VIALS AND CAN RUN 10 TO 12 TESTS."

11:31AM 22 DO YOU SEE THAT?

11:31AM 23 A. YES.

11:31AM 24 Q. AND THAT'S MR. BALWANI TALKING ABOUT CLINICAL TRIALS USING
11:31AM 25 TECHNOLOGY AND NOT THERANOS; CORRECT?

11:31AM 1 A. CORRECT.

11:31AM 2 Q. BUT THEN HE DESCRIBES, "THERANOS TAKES 3 DROPS AND CAN RUN

11:31AM 3 60 TO 70 TESTS."

11:31AM 4 DO YOU SEE THAT?

11:31AM 5 A. YES.

11:31AM 6 Q. AND THIS IS MR. BALWANI EXPRESSING TO YOU AGAIN THE

11:31AM 7 CAPABILITIES OF THE TECHNOLOGY; RIGHT?

11:31AM 8 A. WELL, HE SAID THAT THEY -- YEAH, THAT THEY CAN TAKE THREE

11:31AM 9 DROPS AND RUN 60, 70 TESTS.

11:31AM 10 Q. AND THAT'S THE CAPABILITY OF THE TECHNOLOGY?

11:32AM 11 A. YES.

11:32AM 12 Q. NOW, ITEMS 6, 7, AND 8, I THINK YOU ALSO TALKED A LITTLE

11:32AM 13 BIT ABOUT THIS MORNING.

11:32AM 14 IN ITEM 6 YOU WROTE, "THEY ARE COMPLETELY VERTICALLY

11:32AM 15 INTEGRATED -- THEY OWN THE LAB AND THE MANUFACTURING."

11:32AM 16 DO YOU SEE THAT?

11:32AM 17 A. YES.

11:32AM 18 Q. OKAY. AND YOU'RE AWARE OF THE FACT THAT THERANOS HAS A

11:32AM 19 LAB, OR HAD A LAB AT THE TIME; CORRECT?

11:32AM 20 A. YES.

11:32AM 21 Q. AND IN SOME OF THESE PUBLIC ANNOUNCEMENTS, THEY WOULD

11:32AM 22 INCLUDE A DESCRIPTION OF A CLIA LAB THAT THEY HAD; CORRECT?

11:32AM 23 A. I BELIEVE SO. I DON'T RECALL.

11:32AM 24 Q. OKAY. AND MR. BALWANI WAS TELLING YOU THAT THERANOS

11:32AM 25 MANUFACTURED ITS ANALYZER, THE EDISON YOU CALLED IT; CORRECT?

11:32AM 1 A. YES.

11:32AM 2 Q. AND THAT'S WHAT HE TOLD YOU?

11:32AM 3 A. I BELIEVE SO, YEAH. I BELIEVE THEY SAID THEY MANUFACTURED

11:33AM 4 ALL OF THEIR OWN COMPONENTS.

11:33AM 5 Q. AND THE OTHER COMPONENT BEING KIND OF THE CONTAINER FOR

11:33AM 6 THE BLOOD?

11:33AM 7 A. YEAH.

11:33AM 8 Q. THAT LITTLE NANOTAINER?

11:33AM 9 A. YES.

11:33AM 10 Q. OKAY. AND DO YOU UNDERSTAND THAT THE USE OF THAT

11:33AM 11 NANOTAINER WAS PART OF THIS FINGERSTICK TECHNOLOGY THAT

11:33AM 12 THERANOS WAS OFFERING TO PATIENTS; RIGHT?

11:33AM 13 A. YES.

11:33AM 14 Q. NOW, ITEM 21, I THINK THAT WAS DISCUSSED A LITTLE BIT THIS

11:33AM 15 MORNING IN YOUR NOTES.

11:33AM 16 ITEM 21 IN YOUR NOTES REFLECT "THEIR PRICING COULD HAVE

11:33AM 17 BEEN SIGNIFICANTLY HIGHER."

11:33AM 18 DO YOU SEE THAT?

11:33AM 19 A. YES.

11:33AM 20 Q. BUT THEN YOU WROTE, "BUT THEY DESIGNED IT TO BE

11:34AM 21 PROFITABLE, EFFECTIVE, AND DISRUPTIVE TO THE STATUS QUO."

11:34AM 22 DO YOU SEE THAT?

11:34AM 23 A. YES.

11:34AM 24 Q. AND SO MR. BALWANI DESCRIBED TO YOU THAT THEY TRIED TO SET

11:34AM 25 THEIR PRICING AT A LEVEL WHERE IT WOULD BE PROFITABLE; RIGHT?

11:34AM 1 A. YES.

11:34AM 2 Q. AND MAYBE CAPTURE SOME MARKET SHARE.

11:34AM 3 FAIR ENOUGH?

11:34AM 4 A. YEAH, THAT MAKES SENSE.

11:34AM 5 Q. BUT THIS LINE, ENTRY 21 IN THE NOTES, DOESN'T SAY THAT

11:34AM 6 THERANOS WAS NET INCOME PROFITABLE; CORRECT?

11:34AM 7 A. NO, IT DOES NOT, NOT IN LINE 21.

11:34AM 8 Q. NOW, YOU DESCRIBED IN YOUR TESTIMONY THIS MORNING THAT YOU

11:34AM 9 UNDERSTOOD FROM WHAT THERANOS TOLD -- YOU UNDERSTOOD FROM WHAT

11:34AM 10 MR. BALWANI TOLD YOU THAT THERANOS COULD FUND ITS OPERATIONS

11:35AM 11 FROM FREE CASH FLOW; CORRECT?

11:35AM 12 A. YEAH, THAT THEY COULD FUND THEIR OPERATION FROM CASH FLOW,

11:35AM 13 YES.

11:35AM 14 Q. BUT CONVERSELY, YOU KNEW THEY WERE RAISING NEW MONEY;

11:35AM 15 CORRECT?

11:35AM 16 A. YES.

11:35AM 17 Q. AND YOU ALSO KNEW OF THE WALGREENS RELATIONSHIP AT THE

11:35AM 18 TIME; CORRECT?

11:35AM 19 A. YES.

11:35AM 20 Q. WERE YOU AWARE OF THE FACT THAT, CONCURRENT WITH YOUR

11:35AM 21 INVESTMENT, THERANOS RECEIVED THE BALANCE OF \$100 MILLION FROM

11:35AM 22 WALGREENS AS PART OF THEIR PARTNERSHIP?

11:35AM 23 A. I KNEW THAT AT SOME POINT. I DON'T KNOW THE SEQUENCING OF

11:35AM 24 WHEN I KNEW THAT. BUT, YES, I KNEW THEY INVESTED.

11:35AM 25 Q. AND YOU UNDERSTOOD THAT PAYMENT WAS PART OF THEIR

11:35AM 1

PARTNERSHIP?

11:35AM 2

A. I BELIEVE SO. I BELIEVE I KNEW THAT, YES.

11:35AM 3

Q. OKAY. CONTINUING WITH YOUR KIND OF SUMMARY AT THE BOTTOM

11:36AM 4

OF PAGE 1 INTO PAGE 2 AT 4059, YOU WROTE, "I WAS AND CONTINUE

11:36AM 5

TO BE VERY IMPRESSED WITH EVERYTHING I HEAR."

11:36AM 6

DO YOU SEE THAT?

11:36AM 7

A. YES.

11:36AM 8

Q. AND THEN THE PASSAGE CONTINUES ON THE NEXT PAGE.

11:36AM 9

"THEY ARE NOW DOING GENETIC AND HUMAN GENOME WORK THAT

11:36AM 10

WILL PUSH HEALTH CARE INTO AREAS NOT CURRENTLY ATTAINABLE."

11:36AM 11

DO YOU SEE THAT?

11:36AM 12

A. YES.

11:36AM 13

Q. AND THAT'S RELATING TO THIS KIND OF NUCLEIC ACID

11:37AM 14

AMPLIFICATION STYLE OF TESTING; CORRECT?

11:37AM 15

A. I HAVE NO IDEA.

11:37AM 16

Q. SO THE REFERENCE TO HUMAN GENOME WORK, YOU'RE NOT REALLY

11:37AM 17

SURE WHAT THAT MEANS?

11:37AM 18

A. NOT REALLY.

11:37AM 19

Q. OKAY.

11:37AM 20

A. I MEAN, I UNDERSTAND HUMAN GENOME WORK IS BEING CONDUCTED,

11:37AM 21

BUT I DON'T -- TO WHAT END, I DON'T KNOW. IT SOUNDED

11:37AM 22

IMPORTANT, THOUGH.

11:37AM 23

Q. FAIR ENOUGH.

11:37AM 24

AND THEN YOU WROTE, "IT LOOKS AND SOUNDS LIKE EVEN AT

11:37AM 25

CURRENT LEVELS THIS IS AN INTERESTING STOCK. OF COURSE THEY

11:37AM 1 NEED TO EXECUTE WHICH THEY ARE DOING NOW."

11:37AM 2 DO YOU SEE THAT?

11:37AM 3 A. YES.

11:37AM 4 Q. AND BY THAT YOU MEANT YOU UNDERSTOOD, OF COURSE,

11:37AM 5 ULTIMATELY THEY HAVE TO EXECUTE ON THIS BUSINESS PLAN TO ROLL

11:37AM 6 OUT THIS TESTING BUSINESS INTO WALGREENS OR OTHER STORES

11:37AM 7 NATIONWIDE; CORRECT?

11:37AM 8 A. YES.

11:37AM 9 Q. AND WHETHER THAT MAY OR MAY NOT HAPPEN, IT WAS UNCLEAR?

11:37AM 10 A. YEAH. YEAH.

11:37AM 11 Q. YOU CAN TAKE THAT DOWN.

11:38AM 12 NOW, AGAIN, WHEN YOU SPOKE WITH MR. BALWANI, HE DESCRIBED

11:38AM 13 TO YOU KIND OF HIGH LEVEL DESCRIPTIONS OF THE BUSINESS AND THE

11:38AM 14 TECHNOLOGY.

11:38AM 15 IS THAT FAIR?

11:38AM 16 A. NOT THE DETAIL OF THE TECHNOLOGY, JUST THAT THE TECHNOLOGY
11:38AM 17 WAS THERE AND COMPLETE.

11:38AM 18 Q. OKAY. AND THEN HIGH LEVEL DISCUSSION OF FINANCIALS, THEY

11:38AM 19 COULD FUND THEIR OPERATIONS, BUT THEY WERE RAISING MONEY TO

11:38AM 20 KIND OF ACCELERATE THIS BUSINESS; CORRECT?

11:38AM 21 A. YES.

11:38AM 22 Q. BUT THE DETAILS, THE DETAILS REGARDING THE TECHNOLOGY,

11:38AM 23 EXACTLY WHAT IT WAS, HOW EXTENSIVE IT WAS, WHAT MAY OR MAY NOT

11:39AM 24 HAVE BEEN USED, MR. BALWANI DIDN'T TELL YOU ANYTHING ABOUT

11:39AM 25 THAT; CORRECT?

11:39AM 1 A. CORRECT.

11:39AM 2 Q. AND THE DETAILS, YOU KNOW, THERANOS'S ACTUAL REVENUES AT
11:39AM 3 THE TIME, INCOME AT THE TIME, EXPENSES AT THE TIME, PROJECTED
11:39AM 4 REVENUE MAYBE OVER THE NEXT FEW YEARS, NONE OF THAT WAS
11:39AM 5 PROVIDED TO YOU?

11:39AM 6 A. CORRECT.

11:39AM 7 Q. AND NOTWITHSTANDING THAT FACT, YOU STILL DECIDED TO INVEST
11:39AM 8 WITH YOUR FRIENDS AND FAMILY AT THE TIME; CORRECT?

11:39AM 9 A. YES.

11:39AM 10 Q. NOW, I THINK YOU DESCRIBED -- SO YOU MADE THE INVESTMENT
11:39AM 11 ALONG WITH THE FRIENDS AND FAMILY AND POOLED MONEY TOGETHER AND
11:39AM 12 EVENTUALLY PUT IN THE 1.3 MILLION; CORRECT?

11:40AM 13 A. YES.

11:40AM 14 Q. AND THEN THERE WAS THAT MESSAGE THAT YOU SAW FROM
11:40AM 15 MR. BALWANI IN LATE JANUARY OF 2014 RELATING TO WHETHER YOU
11:40AM 16 MIGHT HAVE FURTHER INTEREST IN INVESTMENT; CORRECT?

11:40AM 17 A. YES.

11:40AM 18 Q. BUT TO DO THAT, YOU NEEDED SOME DETAILS; CORRECT?

11:40AM 19 A. YES.

11:40AM 20 Q. OKAY. AND YOU SOUGHT FINANCIAL INFORMATION AND DETAILS
11:40AM 21 OVER THE ENSUING PERIOD; CORRECT?

11:40AM 22 A. YES.

11:40AM 23 Q. BUT NONE WAS PROVIDED?

11:40AM 24 A. CORRECT.

11:40AM 25 Q. BUT MR. BALWANI WAS NOT STILL SEEKING OR PITCHING AN

11:40AM 1 INVESTMENT FROM YOU AT THAT TIME, EITHER; CORRECT?

11:40AM 2 A. NO, WE WERE NOT COMMUNICATING PAST THAT REQUEST.

11:40AM 3 Q. YOUR ONLY VERBAL COMMUNICATION WITH MR. BALWANI WAS ON

11:40AM 4 THAT PHONE CALL; CORRECT?

11:40AM 5 A. YES, TRUE.

11:40AM 6 Q. OKAY. THERE WERE SOME EMAIL EXCHANGES, BUT ACTUAL

11:40AM 7 DISCUSSION WAS JUST THE ONE PHONE CALL?

11:40AM 8 A. YES.

11:40AM 9 Q. NOW, IF YOU COULD TAKE A LOOK AT EXHIBIT 20596. 20596 IS

11:41AM 10 A SHORT EMAIL CHAIN, THE LATTER OF WHICH IS DATED JULY 30,

11:41AM 11 2015.

11:41AM 12 DO YOU SEE THAT?

11:41AM 13 A. YES.

11:41AM 14 Q. AND IT'S AN EXCHANGE AMONGST YOURSELF AND SOME OF YOUR

11:41AM 15 FRIENDS AND FAMILY INVESTORS IN THERANOS; CORRECT?

11:41AM 16 A. YES.

11:41AM 17 MR. CAZARES: MOVE TO ADMIT 20596, YOUR HONOR.

11:41AM 18 MR. BOSTIC: YOUR HONOR, 802 AS TO THE MESSAGE FROM

11:41AM 19 THERANOS.

11:41AM 20 THE COURT: COUNSEL, DO YOU HAVE ANOTHER USE FOR

11:41AM 21 THAT?

11:41AM 22 MR. CAZARES: YOUR HONOR, I BELIEVE THERANOS'S

11:41AM 23 SHAREHOLDER INFORMATION AND COMMUNICATIONS HAVE BEEN

11:42AM 24 COMMUNICATED AND INTRODUCED IN EVIDENCE.

11:42AM 25 THE -- IT'S OFFERED HERE TO INDICATE WHAT THIS INVESTOR

11:42AM 1 RECEIVED.

11:42AM 2 CONTRARY TO HIS TESTIMONY THIS MORNING THAT HE WASN'T
11:42AM 3 GETTING UPDATES, HE IS GETTING UPDATES. HE RECEIVED A
11:42AM 4 SIGNIFICANT UPDATE, AND I WANTED TO QUERY, WELL, WHAT DID YOU
11:42AM 5 DO WITH THAT INFORMATION.

11:42AM 6 MR. BOSTIC: YOUR HONOR, ON THAT, FIRST, THIS IS
11:42AM 7 FROM MID-2015, WHICH IS LONG AFTER THE PERIOD DURING WHICH THE
11:42AM 8 WITNESS WAS SAYING HE WASN'T GETTING UPDATES.

11:42AM 9 AND IT SOUNDS LIKE COUNSEL IS EXPRESSING A NON FOR THE
11:42AM 10 TRUTH PURPOSE.

11:42AM 11 NO OBJECTION TO IT COMING IN IF IT'S NOT FOR THE TRUTH.

11:42AM 12 IT STILL MIGHT BE A 401 ISSUE, BUT SUBMIT IT.

11:42AM 13 THE COURT: THAT'S WHAT I WAS ASKING YOU FOR.

11:42AM 14 WHAT'S --

11:42AM 15 MR. CAZARES: I CAN WORK WITH THAT, YOUR HONOR.

11:42AM 16 THAT'S FINE. I'LL JUST ASK QUESTIONS.

11:42AM 17 THE COURT: OKAY.

11:42AM 18 BY MR. CAZARES:

11:42AM 19 Q. SO AT SOME POINT IN TIME YOU LEARNED THAT THERANOS
11:43AM 20 OBTAINED FDA APPROVAL; CORRECT?

11:43AM 21 A. YEAH. IT WAS ON A SINGLE TEST, YES.

11:43AM 22 Q. BUT THAT WAS STILL FDA APPROVAL; RIGHT?

11:43AM 23 A. YEAH.

11:43AM 24 Q. THAT WAS EXCITING?

11:43AM 25 A. YEAH.

11:43AM 1 Q. AND BASED ON YOUR JUST GENERAL UNDERSTANDING, THE FDA
11:43AM 2 STILL HAS REQUIREMENTS THAT DEVICE MAKERS HAVE TO MEET, AND IT
11:43AM 3 SOUNDS LIKE THERANOS SATISFIED THE FDA?
11:43AM 4 A. YEAH, IT WAS A GOOD ANNOUNCEMENT.
11:43AM 5 Q. NOW, IN YOUR TESTIMONY THIS MORNING IN RESPONSE TO
11:43AM 6 QUESTIONS, YOU DESCRIBED HAVING FURTHER COMMUNICATIONS WITH
11:43AM 7 MS. HOLMES IN 2015 AND MAYBE EVEN LATER; CORRECT?
11:43AM 8 A. YES.
11:43AM 9 Q. BUT YOU HAD NO DISCUSSIONS WITH MR. BALWANI; CORRECT?
11:43AM 10 A. CORRECT.
11:43AM 11 Q. AND YOU HAVE NO IDEA, KNOWLEDGE WHETHER OR NOT MR. BALWANI
11:43AM 12 WAS AWARE OF THE SUBSTANCE OF YOUR DISCUSSIONS WITH MS. HOLMES;
11:43AM 13 CORRECT?
11:43AM 14 A. CORRECT.
11:44AM 15 MR. CAZARES: YOUR HONOR, MAY I HAVE A MOMENT?
11:44AM 16 THE COURT: YES.
11:44AM 17 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)
11:44AM 18 MR. CAZARES: THANK YOU, MR. MENDENHALL.
11:44AM 19 YOUR HONOR, NO FURTHER QUESTIONS.
11:44AM 20 THE COURT: REDIRECT?
11:44AM 21 MR. BOSTIC: YES, YOUR HONOR.
11:44AM 22 **REDIRECT EXAMINATION**
11:44AM 23 BY MR. BOSTIC:
11:45AM 24 Q. GOOD MORNING AGAIN, MR. MENDENHALL.
11:45AM 25 A. GOOD MORNING.

11:45AM 1 Q. I'D LIKE TO JUST FOLLOW UP ON A FEW OF THE TOPICS THAT YOU
11:45AM 2 DISCUSSED WITH MR. CAZARES.

11:45AM 3 FIRST, MR. CAZARES ASKED YOU WHETHER YOU WERE AWARE EARLY
11:45AM 4 ON ABOUT THE RELATIONSHIP BETWEEN MS. HOLMES AND MR. BALWANI.

11:45AM 5 DO YOU REMEMBER THAT QUESTION?

11:45AM 6 A. YES.

11:45AM 7 Q. WHEN, IF EVER, DID YOU BECOME AWARE THAT MS. HOLMES AND
11:45AM 8 MR. BALWANI WERE ROMANTICALLY INVOLVED?

11:45AM 9 A. IT CAME OUT PUBLICLY AT SOME POINT. I'M NOT SURE WHEN I
11:45AM 10 WAS MADE AWARE, BUT I WAS NOT MADE AWARE OF THAT BY EITHER
11:45AM 11 MS. HOLMES OR MR. BALWANI.

11:45AM 12 Q. WERE YOU AWARE OF THEIR ROMANTIC RELATIONSHIP WHEN YOU
11:45AM 13 MADE THE INVESTMENT IN THE COMPANY IN EARLY 2014?

11:45AM 14 A. NO.

11:45AM 15 Q. WOULD THAT HAVE BEEN AN IMPORTANT FACT FOR YOU TO CONSIDER
11:45AM 16 AS SOMEONE DECIDING WHETHER TO INVEST IN THE COMPANY?

11:46AM 17 A. YES.

11:46AM 18 Q. AND WHY IS THAT?

11:46AM 19 A. I THINK FROM A GOVERNANCE PERSPECTIVE, WHEN YOU'RE RUNNING
11:46AM 20 A COMPANY LIKE THIS, OR ANY CORPORATION, THOSE TYPES OF
11:46AM 21 RELATIONSHIPS, BECAUSE THEY CAN BE CONFLICTING AND YOU DON'T
11:46AM 22 HAVE -- IT KIND OF REMOVES SOME OF THE INDEPENDENCE OF THE
11:46AM 23 LEADERSHIP, IT'S IMPORTANT FOR PEOPLE TO KNOW. IT SHOULD BE
11:46AM 24 DISCLOSED TO THE BOARD, THROUGH GENERAL COUNSEL, IT SHOULD BE
11:46AM 25 JUST DISCLOSED AND COMMUNICATED TO LET US HAVE FULL VIEW OF --

11:46AM 1 I MEAN, THERE'S ALWAYS POTENTIAL CONFLICTS WHEN THE TWO LEADERS
11:46AM 2 OF A FIRM ARE ROMANTICALLY INVOLVED.

11:46AM 3 Q. AND WOULD YOU HAVE WANTED TO KNOW ABOUT THEIR RELATIONSHIP
11:46AM 4 IN CONSIDERING THE THINGS THAT MR. BALWANI TOLD YOU DURING YOUR
11:46AM 5 45 MINUTE PHONE CALL?

11:46AM 6 A. IT CAN HAVE INFLUENCE, YES.

11:46AM 7 Q. I'D LIKE TO TALK TO YOU ABOUT WHAT MR. BALWANI TOLD YOU
11:47AM 8 ABOUT THE STATE OF THE TECHNOLOGY JUST BEFORE YOU INVESTED, AND
11:47AM 9 IF WE CAN PUT BACK UP EXHIBIT 4059.

11:47AM 10 IF WE CAN ZOOM IN ON THE TOP PORTION OF YOUR LIST, SO
11:47AM 11 AGAIN, WE'RE LOOKING AT ITEMS 3 THROUGH 5 WHERE IT SAYS NO --
11:47AM 12 OR SORRY. "THE 'SCIENCE' BEHIND THERANOS IS COMPLETE;

11:47AM 13 "NO NEW SCIENCE NEEDED;

11:47AM 14 "NO NEW INVENTION NEEDED."

11:47AM 15 DO YOU SEE THAT?

11:47AM 16 A. YES.

11:47AM 17 Q. AND DURING CROSS-EXAMINATION MR. CAZARES SHOWED YOU SOME
11:47AM 18 LANGUAGE FROM "THE WALL STREET JOURNAL" THAT TALKED WITH THE
11:47AM 19 SECRET THAT EMPLOYEES ARE NOW REFINING INVOLVES DEVICES THAT
11:47AM 20 CAN PERFORM THOSE TESTS.

11:47AM 21 DO YOU RECALL THAT?

11:47AM 22 A. YES.

11:47AM 23 Q. FIRST OF ALL, DO YOU RECALL THE DATE OF THAT
11:47AM 24 "WALL STREET JOURNAL" ARTICLE?

11:47AM 25 A. I DO NOT, BUT IT WAS, IT LOOKS LIKE, BEFORE I SENT THIS

11:47AM 1 EMAIL. IT LOOKS LIKE THE 16TH. I DON'T RECALL.

11:47AM 2 Q. NO PROBLEM.

11:47AM 3 LET ME DIRECT YOUR ATTENTION TO, IN THE BINDER, TAB 1106
11:48AM 4 IN THE WHITE BINDER.

11:48AM 5 A. OKAY.

11:48AM 6 Q. AND DOES THAT REMIND YOU WHEN THAT "WALL STREET JOURNAL"
11:48AM 7 ARTICLE CAME OUT THAT TALKED ABOUT REFINING THAT SECRET
11:48AM 8 INVOLVING THE DEVICES?

11:48AM 9 A. YES. IT WAS SEPTEMBER OF 2013.

11:48AM 10 Q. OKAY. WAS THAT MORE THAN THREE MONTHS BEFORE YOUR
11:48AM 11 CONVERSATION WITH MR. BALWANI?

11:48AM 12 A. YES.

11:48AM 13 Q. THAT ARTICLE TALKS ABOUT -- WELL, FIRST OF ALL, DOES THE
11:48AM 14 ARTICLE SAY ANYTHING ABOUT REFINING THE DEVICES SPECIFICALLY?

11:48AM 15 A. I WOULD HAVE TO REREAD IT, BUT --

11:48AM 16 Q. TAKE A MOMENT AND REVIEW IT IF YOU WOULD LIKE. IT'S ON
11:48AM 17 THE PAGE 1 OF THE ARTICLE IN THAT FIRST INDENTED PARAGRAPH.

11:48AM 18 A. IT JUST SAYS THE SECRET THAT HUNDREDS OF EMPLOYEES ARE NOW
11:48AM 19 REFINING. IT SOUNDS LIKE THEY'RE -- I DON'T KNOW IF THEY'RE
11:49AM 20 REFINING THEIR SECRET OR REFINING THEIR TECHNOLOGY. IT
11:49AM 21 INVOLVES DEVICES.

11:49AM 22 Q. OKAY. IN ANY EVENT, IS THAT THE SAME THING THAT
11:49AM 23 MR. BALWANI TOLD YOU MONTHS LATER DURING YOUR ONE-ON-ONE
11:49AM 24 CONVERSATION WITH THE PRESIDENT ON DECEMBER 22ND?

11:49AM 25 A. NO. MY NOTES ARE CLEAR THAT NO NEW INVENTION OR NO NEW

11:49AM 1 SCIENCE WAS NEEDED IS WHAT I WAS TOLD.

11:49AM 2 Q. MR. CAZARES ASKED YOU ABOUT WHETHER YOU WOULD EXPECT A
11:49AM 3 TECHNOLOGY COMPANY TO ALWAYS BE IMPROVING ITS TECHNOLOGY.

11:49AM 4 DO YOU REMEMBER THAT?

11:49AM 5 A. YES.

11:49AM 6 Q. AT THIS TIME WHEN MR. BALWANI SAID THE SCIENCE WAS
11:49AM 7 COMPLETE, NO NEW INVENTION NEEDED, DID YOU TAKE THAT TO MEAN
11:49AM 8 THE COMPANY WOULD NEVER DO ANY WORK TO IMPROVE ITS TECHNOLOGY?

11:49AM 9 A. NO.

11:49AM 10 Q. WHAT DID YOU THINK THAT MEANT?

11:49AM 11 A. WELL, I THINK IT MEANT THAT THEY WERE FUNCTIONING AS A
11:49AM 12 BLOOD TESTING COMPANY ON SMALL DROPS OF BLOOD, FULLY
11:49AM 13 FUNCTIONING.

11:50AM 14 Q. IF YOU HAD BEEN TOLD THAT THE COMPANY'S HOME BUILT
11:50AM 15 ANALYZER COULD NEVER DO MORE THAN A DOZEN OF THE MANY TESTS
11:50AM 16 THAT IT OFFERED, WOULD THAT --

11:50AM 17 MR. CAZARES: LEADING.

11:50AM 18 MR. BOSTIC: I HADN'T FINISHED THE QUESTION YET,
11:50AM 19 YOUR HONOR.

11:50AM 20 THE COURT: GO AHEAD.

11:50AM 21 BY MR. BOSTIC:

11:50AM 22 Q. IF YOU HAD BEEN TOLD THAT THE COMPANY'S HOME GROWN
11:50AM 23 ANALYZER COULD NEVER PERFORM MORE THAN A DOZEN TESTS OF THE
11:50AM 24 MANY TESTS THAT IT OFFERED, WOULD THAT HAVE BEEN CONSISTENT
11:50AM 25 WITH OR INCONSISTENT WITH WHAT MR. BALWANI TOLD YOU ABOUT THE

11:50AM 1 STATE OF THE TECHNOLOGY?

11:50AM 2 MR. CAZARES: OBJECTION. FOUNDATION AND LEADING.

11:50AM 3 THE COURT: OVERRULED.

11:50AM 4 YOU CAN ANSWER THE QUESTION, SIR.

11:50AM 5 THE WITNESS: IT WOULD BE INCONSISTENT WITH WHAT I
11:50AM 6 TOOK AWAY FROM THIS CONVERSATION.

11:50AM 7 BY MR. BOSTIC:

11:50AM 8 Q. AND WHY IS THAT?

11:50AM 9 A. BECAUSE I THOUGHT THEY HAD 60 TO 70 TESTS THAT THEY COULD
11:50AM 10 RUN SUCCESSFULLY.

11:50AM 11 Q. AND LET'S LOOK ON YOUR LIST, SCROLLING DOWN A LITTLE BIT,
11:51AM 12 TO ITEM NUMBER 12.

11:51AM 13 IS THIS WHAT MR. BALWANI TOLD YOU ABOUT THESE 60 TO 70
11:51AM 14 TESTS?

11:51AM 15 A. YES.

11:51AM 16 Q. AND DO YOU SEE HERE IT INDICATES THAT "WHILE CURRENT
11:51AM 17 CLINICAL TRIALS CAN TAKE 6 VIALS AND CAN RUN 10 TO 12 TESTS.
11:51AM 18 THERANOS TAKES 3 DROPS AND CAN RUN 60 TO 70 TESTS.

11:51AM 19 DO YOU SEE THAT?

11:51AM 20 A. YES.

11:51AM 21 Q. AND DID YOU THINK AT THIS TIME THAT CONVENTIONAL
11:51AM 22 TECHNOLOGY WAS ONLY CAPABLE OF DOING 10 TO 12 BLOOD TESTS
11:51AM 23 OVERALL?

11:51AM 24 A. I DIDN'T KNOW. JUST FOR WHATEVER THE 10 OR 12 TESTS, HE
11:51AM 25 INDICATED IT WOULD TAKE 6 VIALS.

11:51AM 1 I THINK IT WAS MORE OF A SAMPLE OF WHAT THE THERANOS
11:51AM 2 CAPABILITIES WERE.

11:51AM 3 Q. I SEE.

11:51AM 4 AND IS THIS LINE ITEM 12 ABOUT HOW MANY DIFFERENT KINDS OF
11:51AM 5 TESTS THE DEVICE CAN DO, OR HOW MANY DIFFERENT TESTS CAN BE
11:51AM 6 DONE ON A SINGLE SAMPLE AS YOU UNDERSTOOD IT?

11:51AM 7 A. UM, MY UNDERSTANDING WAS THAT IT COULD TAKE 3 DROPS AND
11:52AM 8 RUN 60 OR 70 TESTS.

11:52AM 9 Q. ON THAT SINGLE SAMPLE?

11:52AM 10 A. YES.

11:52AM 11 Q. LET'S GO BACK TO 2 -- OR, I'M SORRY, 3 THROUGH 5.

11:52AM 12 YOU ALSO WERE ASKED ABOUT THE USE OF INVESTOR MONEY AND
11:52AM 13 WHETHER IT WOULD BE USED FOR SCALING OR FOR RESEARCH AND
11:52AM 14 DEVELOPMENT.

11:52AM 15 DO YOU REMEMBER THAT?

11:52AM 16 A. YES.

11:52AM 17 Q. MR. CAZARES ASKED YOU WHETHER THERE WAS ANYTHING WRONG
11:52AM 18 WITH THE COMPANY USING INVESTOR MONEY FOR RESEARCH AND
11:52AM 19 DEVELOPMENT.

11:52AM 20 WHAT IS YOUR VIEW ON THAT?

11:52AM 21 A. WELL, THERE'S NOTHING WRONG WITH IT.

11:52AM 22 BUT BASED ON MY CONVERSATION, INVESTMENT DECISIONS WERE
11:52AM 23 LARGELY MADE OR RELAYED REGARDING WHAT THIS MONEY WAS FOR. I
11:52AM 24 RELAYED TO MY SHAREHOLDERS -- TO SHAREHOLDERS, INVESTORS,
11:52AM 25 FRIENDS, THAT THIS MONEY WAS USED FOR GROWTH. IT WAS GROWTH

11:53AM 1 CAPITAL VERSUS MORE INVENTION.

11:53AM 2 Q. OKAY. SO JUST SO YOUR TESTIMONY IS CLEAR, ARE YOU SAYING
11:53AM 3 THAT, BY DEFINITION, IT'S IMPROPER FOR A COMPANY TO USE
11:53AM 4 INVESTOR MONEY FOR RESEARCH AND DEVELOPMENT?

11:53AM 5 A. I, I THINK THAT A COMPANY, IF IT DETERMINED THAT IT HAD
11:53AM 6 ENOUGH CAPITAL TO INVEST AND IMPROVE UPON THE VALUE FOR THE
11:53AM 7 SHAREHOLDERS, THAT WOULD BE FINE.

11:53AM 8 I, I WAS UNDER THE IMPRESSION THAT THEY WERE ALREADY FREE
11:53AM 9 GENERATING CASH AND OPERATIONS AND THIS MONEY WAS JUST FOR
11:53AM 10 GROWTH, AND I UNDERSTAND FROM EXPERIENCE THAT GROWTH CAPITAL IS
11:53AM 11 FOR GROWING THE FIRM AND THERE WAS NO MORE VENTURE CAPITAL
11:53AM 12 NEEDED. THAT'S MORE OF A VENTURE DEAL.

11:53AM 13 BUT THEY WOULD IMPROVE. I MEAN, APPLE PUTS MONEY BACK
11:53AM 14 INTO THEIR IPHONE, SO I UNDERSTAND THE SAMPLE.

11:54AM 15 BUT IF THERE WAS A WAY TO IMPROVE UPON THEIR TECHNOLOGY
11:54AM 16 THAT MADE IT MORE EFFICIENT OR EXPANDED ITS CAPABILITIES, YEAH,
11:54AM 17 I WOULD SAY TO DO THAT SINCE THEY WERE CASH FLOWING.

11:54AM 18 Q. BUT BASED ON WHAT MR. BALWANI TOLD YOU ABOUT HOW THE MONEY
11:54AM 19 WAS GOING TO BE USED, HOW DID THAT AFFECT YOUR VIEW OF YOUR
11:54AM 20 INVESTMENT DECISION?

11:54AM 21 A. THAT THEY HAD NEW, STATE-OF-THE-ART TECHNOLOGY THAT THEY
11:54AM 22 HAD INVENTED AND THAT IT WAS VALUABLE, AND THEY WOULD BE
11:54AM 23 HARVESTING THE RETURNS FROM THAT TECHNOLOGY, AND THIS CAPITAL
11:54AM 24 WOULD HELP THEM EXPAND AND HARVEST THOSE RETURNS.

11:54AM 25 Q. ON DIRECT I ASKED YOU ABOUT WHETHER YOU WERE AWARE OF

11:54AM 1 THERANOS'S RELIANCE ON VEIN DRAWS FOR ITS BLOOD TESTING.

11:54AM 2 DO YOU REMEMBER THAT QUESTION?

11:54AM 3 A. YES.

11:54AM 4 Q. ON CROSS, MR. CAZARES ASKED YOU A DIFFERENT QUESTION,
11:54AM 5 WHICH WAS WHETHER YOU WERE AWARE OF THE COMPANY'S USE OF VEIN
11:54AM 6 DRAWS.

11:54AM 7 DO YOU RECALL THAT DISCUSSION?

11:54AM 8 A. YES.

11:54AM 9 Q. AND HE SHOWED YOU SOME INSTANCES WHERE, ON THE WEBSITE AND
11:54AM 10 IN OTHER PUBLIC MATERIALS, VEIN DRAWS WERE REFERENCED.

11:54AM 11 DO YOU REMEMBER THAT?

11:54AM 12 A. YES.

11:54AM 13 Q. SO LET ME ASK YOU AGAIN, AT ANY POINT WERE YOU TOLD THAT
11:55AM 14 THE COMPANY NEEDED TO RELY ON VEIN DRAW SAMPLES BECAUSE ITS
11:55AM 15 TECHNOLOGY WAS NOT CAPABLE OF PERFORMING ALL OF ITS TESTS?

11:55AM 16 MR. CAZARES: OBJECTION. CALLS FOR SPECULATION.
11:55AM 17 FOUNDATION. ALSO LEADING.

11:55AM 18 THE COURT: OVERRULED.

11:55AM 19 MR. BOSTIC: I'LL START THAT QUESTION AGAIN. I'M
11:55AM 20 SORRY.

11:55AM 21 Q. THE QUESTION WAS, AT ANY POINT, WERE YOU TOLD THAT THE
11:55AM 22 COMPANY NEEDED TO RELY ON VEIN SAMPLES BECAUSE ITS TECHNOLOGY
11:55AM 23 DID NOT PERFORM ALL OF THE TESTS ON A FINGERSTICK?

11:55AM 24 A. NO.

11:55AM 25 Q. WOULD THAT FACT HAVE BEEN IMPORTANT TO YOU AS SOMEONE

11:55AM 1 CONSIDERING AN INVESTMENT IN THE COMPANY?

11:55AM 2 A. YES.

11:55AM 3 Q. AND WHY WOULD THAT HAVE BEEN IMPORTANT?

11:55AM 4 A. THE DISCLOSURE IS IMPORTANT TO UNDERSTAND WHAT THE
11:55AM 5 CAPABILITIES WE WERE INVESTING IN COULD DO.

11:55AM 6 SO THE DISCLOSURE IS IMPORTANT.

11:55AM 7 IF THEY WERE DRAWING FROM VEINS ON CERTAIN TESTS, IT
11:55AM 8 DOESN'T MEAN IT'S UNACCEPTABLE. IT JUST MEANS THAT MY
11:55AM 9 UNDERSTANDING WAS THAT THE DROPS OF BLOOD WERE RUNNING 60 TO 70
11:56AM 10 TESTS, AND THAT WAS INCREDIBLE, YOU KNOW? WE WERE EXCITED
11:56AM 11 ABOUT THAT.

11:56AM 12 Q. DO YOU RECALL A DISCUSSION WITH MR. CAZARES ABOUT WHAT HE
11:56AM 13 CALLED AN FDA APPROVAL OF THE THERANOS TECHNOLOGY?

11:56AM 14 A. YES.

11:56AM 15 Q. SITTING HERE TODAY, DO YOU HAVE ANY KNOWLEDGE ABOUT ANY
11:56AM 16 IMPORTANT DIFFERENCES BETWEEN AN FDA APPROVAL VERSUS AN FDA
11:56AM 17 CLEARANCE?

11:56AM 18 A. I DON'T REALLY HAVE A TREMENDOUS AMOUNT OF KNOWLEDGE ON
11:56AM 19 REGULATORY.

11:56AM 20 Q. FOR THE FDA CLEARANCE THAT DID HAPPEN IN 2015, YOU
11:56AM 21 TESTIFIED THAT IT WAS RELATED TO A SINGLE TEST.

11:56AM 22 IS THAT YOUR UNDERSTANDING?

11:56AM 23 A. YES, THE ANNOUNCEMENT HAD SOMETHING TO DO WITH HERPES.

11:56AM 24 Q. MR. CAZARES ASKED YOU ABOUT WHETHER YOU KNEW WHETHER IT
11:56AM 25 WAS THE SAME TECHNOLOGY THAT GOT THAT CLEARANCE VERSUS WHAT WAS

11:56AM 1 BEING USED IN 2013.

11:56AM 2 DO YOU REMEMBER THAT?

11:56AM 3 A. VAGUELY, YEAH.

11:56AM 4 Q. DO YOU KNOW? DO YOU HAVE KNOWLEDGE ABOUT WHETHER THAT
11:57AM 5 INVOLVED THE SAME TECHNOLOGY OR THE SAME DEVICE AT ALL AS TO
11:57AM 6 WHAT THERANOS WAS USING IN 2013?

11:57AM 7 A. I HAVE NO KNOWLEDGE.

11:57AM 8 Q. DO YOU KNOW WHETHER THE EDISON DEVICE THERANOS WAS USING
11:57AM 9 IN 2013 WAS EVEN CAPABLE OF RUNNING A HERPES TEST?

11:57AM 10 A. I DON'T KNOW.

11:57AM 11 Q. DO YOU ALSO REMEMBER MR. CAZARES MENTIONING THE 4.0 DEVICE
11:57AM 12 TO YOU?

11:57AM 13 A. YES.

11:57AM 14 Q. AND DO YOU KNOW WHETHER THERANOS EVER USED THE 4.0 DEVICE
11:57AM 15 FOR A SINGLE CLINICAL PATIENT TEST?

11:57AM 16 A. I DON'T RECALL WHAT THE 4.0 WAS VERSUS ANY OTHER TESTING.

11:57AM 17 Q. THERE WAS SOME DISCUSSION ABOUT THE AMOUNT OF FINANCIAL
11:57AM 18 DISCLOSURES THAT YOU RECEIVED FROM THERANOS, AND MR. CAZARES
11:57AM 19 ASKED YOU WHETHER YOU WERE -- WHETHER YOU UNDERSTOOD THAT YOU
11:57AM 20 WERE NOT LEGALLY ENTITLED TO MORE INFORMATION.

11:57AM 21 DO YOU RECALL THAT?

11:57AM 22 A. YES.

11:57AM 23 Q. WAS THE AMOUNT OF INFORMATION AND TRANSPARENCY THAT YOU
11:57AM 24 WERE GETTING FROM THERANOS NORMAL OR UNUSUAL BASED ON YOUR
11:58AM 25 PREVIOUS EXPERIENCE INVESTING IN COMPANIES?

11:58AM 1 A. IT WAS UNUSUAL. UNUSUALLY NONEXISTENT.

11:58AM 2 Q. MR. CAZARES LISTED SOME THINGS THAT YOU DIDN'T HAVE, LIKE
11:58AM 3 FINANCIAL DETAILS AND OTHER WRITTEN MATERIALS.

11:58AM 4 DO YOU RECALL THAT?

11:58AM 5 A. YES.

11:58AM 6 Q. SO MY QUESTION IS, WHAT DID YOU RELY UPON INSTEAD IN
11:58AM 7 MAKING YOUR DECISION? IF YOU DIDN'T HAVE THOSE THINGS, WHAT
11:58AM 8 DID YOU PLACE YOUR TRUST IN?

11:58AM 9 A. WELL, I PLACED A LOT OF TRUST IN THE COMMUNICATION THAT I
11:58AM 10 HAD WITH THE SENIOR LEADERSHIP OF THE FIRM, ELIZABETH HOLMES
11:58AM 11 AND SUNNY, ON THIS CONVERSATION.

11:58AM 12 AND THEN I RELIED ON, YOU KNOW, CONTRACTS FROM WALGREENS,
11:58AM 13 ASSUMING THEY DID THEIR HOMEWORK; VERY LARGE INVESTORS THAT
11:58AM 14 CAME -- THE INVESTOR NAMES BECAME SOMEHOW PUBLIC AND THEY
11:58AM 15 SEEMED LIKE THEY WOULD DO THEIR HOMEWORK; THEIR BOARD OF
11:58AM 16 DIRECTORS WAS HIGHLY -- A HIGH QUALITY BUNCH OF PEOPLE,
11:58AM 17 SENATOR TRENT LOTT, THERE WAS A DOCTOR WHO INVOLVED OR AN
11:59AM 18 INVESTOR, LARRY ELLISON FROM ORACLE WAS AN INVESTOR.

11:59AM 19 SO WE RELIED ON THIS INCREDIBLE PEDIGREE OF ALL OF THESE
11:59AM 20 INVESTORS IN THIS THING, AND YOU KNOW, IT SEEMED LIKE SOME
11:59AM 21 PRETTY SMART PEOPLE, SO WE -- I DROPPED MY JUDGMENT A LITTLE
11:59AM 22 BIT TO INVEST ALONGSIDE THESE PEOPLE.

11:59AM 23 NOW, WE WERE IN AHEAD OF MOST OF THESE PEOPLE, BUT THEY
11:59AM 24 WERE EVALUATING WHAT THE COMPANY SAID AND WHAT WE LEARNED.

11:59AM 25 Q. AND THE FIRST THING THAT YOU MENTIONED IN THAT LIST WERE

11:59AM 1 THE COMMUNICATIONS THAT YOU HAD WITH MS. HOLMES AND

11:59AM 2 MR. BALWANI; CORRECT?

11:59AM 3 A. YES.

11:59AM 4 Q. AND WOULD YOU HAVE INVESTED REGARDLESS OF WHAT MR. BALWANI
11:59AM 5 TOLD YOU IN THAT CALL, OR DID THE THINGS THAT HE TOLD YOU ABOUT
11:59AM 6 THE COMPANY MATTER TO YOUR DECISION?

11:59AM 7 A. THESE WERE VERY, VERY SPECIFIC AND COMPELLING DETAILS, AND
11:59AM 8 THEY WERE WHAT I WAS SEEKING.

11:59AM 9 THE ONLY THING I DIDN'T GET WAS A BALANCE SHEET AND
12:00PM 10 REVENUE AND P&L.

12:00PM 11 BUT THESE WERE VERY SPECIFIC TO WHAT I NEEDED TO KNOW AND
12:00PM 12 WHAT I ASSUMED EVERYBODY KNEW, WHICH IS WHY THEY INVESTED.

12:00PM 13 Q. THANK YOU.

12:00PM 14 NO FURTHER QUESTIONS.

12:00PM 15 THE COURT: SURE.

12:00PM 16 MR. CAZARES: BRIEFLY, YOUR HONOR.

12:00PM 17 **RECROSS-EXAMINATION**

12:00PM 18 BY MR. CAZARES:

12:00PM 19 Q. GOOD AFTERNOON NOW, MR. MENDENHALL.

12:00PM 20 A. YES.

12:00PM 21 Q. I THINK WE'RE ALMOST THERE. JUST A FEW FOLLOW-UP
12:00PM 22 QUESTIONS.

12:00PM 23 YOU WERE ASKED SOME FOLLOWUP ABOUT YOUR KNOWLEDGE OF THE
12:00PM 24 RELATIONSHIP BETWEEN MR. BALWANI AND MS. HOLMES.

12:00PM 25 DO YOU RECALL THAT?

12:00PM 1 A. YES.

12:00PM 2 Q. AND YOU INDICATED YOU WERE UNAWARE OF ANY ROMANTIC

12:00PM 3 RELATIONSHIP PRIOR TO YOUR INVESTING; CORRECT?

12:00PM 4 A. YES.

12:00PM 5 Q. AND YOU INDICATED THAT IN YOUR MIND THAT RAISES SOME

12:00PM 6 GOVERNANCE QUESTIONS IN A CORPORATION; CORRECT?

12:01PM 7 A. SURE.

12:01PM 8 Q. GOVERNANCE MEANING POTENTIAL CONFLICT ISSUES MAYBE?

12:01PM 9 A. YES.

12:01PM 10 Q. BUT YOU DID UNDERSTAND, AS YOU INDICATED HERE JUST A

12:01PM 11 COUPLE MINUTES AGO, THERANOS HAD A QUITE NOTABLE BOARD OF

12:01PM 12 DIRECTORS; CORRECT?

12:01PM 13 A. YES.

12:01PM 14 Q. AND YOU HAD, GIVEN YOUR EXPERIENCE IN FINANCE, UNDERSTOOD

12:01PM 15 AT THE TIME OF ROLE OF A CORPORATE BOARD; CORRECT?

12:01PM 16 A. YES.

12:01PM 17 Q. AND YOU UNDERSTOOD THAT IN MANY AREAS OF THE GOVERNANCE IN

12:01PM 18 THE CORPORATION, INCLUDING EXECUTIVE HIRES, IT'S THE BOARD WHO

12:01PM 19 HAS THE FINAL SAY; CORRECT?

12:01PM 20 A. YES.

12:01PM 21 Q. I STEPPED OVER YOUR ANSWER.

12:01PM 22 WAS THAT RIGHT?

12:01PM 23 A. YES.

12:01PM 24 Q. OKAY. AND AGAIN, YOU, AS YOU'VE JUST TOLD THE JURY, YOU

12:01PM 25 TRUSTED THE BOARD OF THERANOS, THAT THEY WERE OVERSEEING THINGS

12:01PM 1 AND WERE MAKING THE RIGHT DECISIONS; CORRECT?

12:01PM 2 A. YES, IT WAS A VERY CREDIBLE BOARD.

12:01PM 3 Q. INCLUDING THEIR APPROVAL OF THE ROLE OF MR. BALWANI WITHIN

12:01PM 4 THERANOS; CORRECT?

12:01PM 5 A. I ASSUME SO, YEAH.

12:02PM 6 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THERANOS'S USE OF

12:02PM 7 TRADITIONAL VENOUS TESTING.

12:02PM 8 DO YOU RECALL THAT?

12:02PM 9 A. YES.

12:02PM 10 Q. AND YOU WERE ASKED SOME QUESTIONS, THE GIST OF WHICH, WERE

12:02PM 11 YOU AWARE OF THE FACT THAT THERANOS NEEDED TO USE VENOUS

12:02PM 12 TESTING BECAUSE ITS TECHNOLOGY COULDN'T PERFORM ALL TESTS.

12:02PM 13 DO YOU RECALL THAT?

12:02PM 14 A. YES.

12:02PM 15 Q. AND I THINK YOUR ANSWER WAS THAT YOU WERE UNAWARE OF THAT;

12:02PM 16 CORRECT?

12:02PM 17 A. YES.

12:02PM 18 Q. NOW, YOU UNDERSTAND, DON'T YOU, AS A SOPHISTICATED

12:02PM 19 INVESTOR, THAT THERE MIGHT BE SOME AREAS OF A BUSINESS, LIKE

12:02PM 20 BLOOD TESTING, WHERE IT MAY NOT MAKE ECONOMIC SENSE FOR

12:02PM 21 THERANOS TO DEVELOP, SPEND THE RESEARCH AND DEVELOPMENT,

12:02PM 22 SCIENTIFIC TIME, ET CETERA, TO DEVELOP A TEST AND SELL IT WHEN

12:03PM 23 SOMEBODY -- WHEN THERE'S NO MARKETS OR A VERY SMALL MARKET?

12:03PM 24 YOU UNDERSTAND THAT, RIGHT?

12:03PM 25 MR. BOSTIC: FOUNDATION. SPECULATION.

12:03PM 1
12:03PM 2
12:03PM 3
12:03PM 4
12:03PM 5
12:03PM 6
12:03PM 7
12:03PM 8
12:03PM 9
12:03PM 10
12:03PM 11
12:03PM 12
12:03PM 13
12:03PM 14
12:03PM 15
12:03PM 16
12:03PM 17
12:03PM 18
12:03PM 19
12:03PM 20
12:04PM 21
12:04PM 22
12:04PM 23
12:04PM 24
12:04PM 25

THE COURT: ARE YOU ASKING THIS AS A GENERAL
BUSINESS PROP --
MR. CAZARES: AS A GENERAL BUSINESS MATTER, YES.
THE COURT: A GENERAL BUSINESS PROPOSITION BASED ON
HIS EXPERIENCE AS AN INVESTOR?
MR. CAZARES: YES.
THE COURT: CAN YOU ANSWER THAT QUESTION WITH THAT
CONTEXT?
THE WITNESS: YEAH, IT DOES MAKE SENSE TO NOT
DEVELOP TESTING ON TESTS THAT WOULD NEVER BE USED OR THAT WERE
TOO EXPENSIVE TO PERFORM.
BY MR. CAZARES:
Q. AND YOU WOULD EXPECT MS. HOLMES AND MR. BALWANI TO FOCUS
THEIR TECHNOLOGY, THEIR FINGERSTICK TESTING TECHNOLOGY ON THE
MOST COMMONLY USED TESTS; RIGHT?
A. YES.
Q. THAT'S WHERE THE MONEY IS GOING TO BE; RIGHT?
A. YES.
Q. SO THAT FEW PERCENTAGE, 1, 2, 3 PERCENT MAYBE OF TESTS
THAT DON'T GET SOLD THAT OFTEN, YOU WOULDN'T REALLY EXPECT THEM
TO SPEND A LOT OF TIME AND RESOURCES TO DEVELOP THOSE KIND OF
TESTS; CORRECT?
A. THAT WOULD BE MY DESIRE, YES.
Q. BECAUSE IT WOULD BE A WASTE OF YOUR MONEY AS AN INVESTOR;
RIGHT?

12:04PM 1 A. YEP. YES, I SHOULD SAY.

12:04PM 2 Q. THANK YOU. IT'S OKAY. WE'RE ALMOST THERE.

12:04PM 3 NOW, YOU DESCRIBED, IN RESPONSE TO QUESTIONS FROM

12:04PM 4 MR. BOSTIC, YOUR EXPECTATION, BASED ON THE DISCUSSION WITH

12:04PM 5 MR. BALWANI, THAT THE FUND RAISING AT THE TIME IN DECEMBER OF

12:04PM 6 2013 WAS INTENDED TO FUEL GROWTH; CORRECT?

12:04PM 7 A. YES, YES.

12:04PM 8 Q. AND YOU HAVE NO KNOWLEDGE, DO YOU, THAT YOUR MONEY WAS

12:04PM 9 USED FOR ANYTHING OTHER THAN THE GROWTH OF THE COMPANY;

12:04PM 10 CORRECT?

12:04PM 11 A. I HAVE NO KNOWLEDGE, RIGHT.

12:04PM 12 Q. BUT YOU ARE AWARE OF THE FACT THAT THERANOS'S EXPANSION OF

12:04PM 13 PATIENT TESTING IN WALGREENS STORES, FROM THE TIME THAT YOU

12:04PM 14 INVESTED THROUGH 2014, EXPANDED; RIGHT?

12:04PM 15 A. YES, I BELIEVE THEY GOT TO 48 STORES OR SOMETHING LIKE

12:05PM 16 THAT.

12:05PM 17 Q. OKAY. AND IN ORDER TO DO THAT, BASED ON WHAT YOU

12:05PM 18 OBSERVED, YOU SAW THE FACT THAT THE COMPANY GREW, EXPANDED THE

12:05PM 19 NUMBER OF STORES, YOU HAD TO HAVE KNOWN THAT THERANOS WAS

12:05PM 20 HIRING MORE PEOPLE TO HANDLE THAT AND INCREASE THE DEMAND;

12:05PM 21 CORRECT?

12:05PM 22 MR. BOSTIC: CALLS FOR SPECULATION.

12:05PM 23 THE COURT: I THINK -- AS A GENERAL BUSINESS

12:05PM 24 PROPOSITION, I THINK THE QUESTION IS, DOES GROWTH REQUIRE

12:05PM 25 ADDITIONAL EMPLOYMENT HIRING?

12:05PM 1 IS THAT WHAT YOUR QUESTION IS?

12:05PM 2 MR. CAZARES: YES, YOUR HONOR, BETTER SAID.

12:05PM 3 THE WITNESS: I WOULD ASSUME SO.

12:05PM 4 BY MR. CAZARES:

12:05PM 5 Q. OKAY. AND DID YOU BECOME AWARE OF THE FACT, IN 2014,
12:05PM 6 THERANOS OPENED ANOTHER LAB IN ARIZONA TO HANDLE THE INCREASED
12:05PM 7 VOLUME?

12:05PM 8 A. I BELIEVE I KNEW THAT, YES.

12:05PM 9 Q. AND THAT WOULD HAVE TAKEN MONEY AS WELL; RIGHT?

12:05PM 10 A. YES.

12:05PM 11 Q. AND THAT WOULD HAVE BEEN CONSISTENT WITH YOUR
12:05PM 12 UNDERSTANDING OF HOW YOUR MONEY WAS BEING USED?

12:05PM 13 A. CERTAINLY. PARTIALLY, YES.

12:06PM 14 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THERANOS'S TESTS,
12:06PM 15 AND I THINK YOU WERE ASKED A QUESTION, DID YOU KNOW THAT
12:06PM 16 THERANOS'S TECHNOLOGY COULD ONLY DO 12 TESTS.

12:06PM 17 DO YOU REMEMBER THAT?

12:06PM 18 A. YES.

12:06PM 19 Q. AND YOU SAID THAT YOU WERE UNAWARE OF THAT FACT; CORRECT?

12:06PM 20 A. YES.

12:06PM 21 Q. NOW, WERE YOU AWARE OF THE FACT, WHETHER IT WAS FROM
12:06PM 22 MR. BALWANI OR ANYONE ELSE, THAT THERANOS'S SCIENTISTS HAD
12:06PM 23 DEVELOPED HUNDREDS OF TESTS THAT RAN ON ITS PROPRIETARY
12:06PM 24 TECHNOLOGY?

12:06PM 25 A. I WAS UNAWARE.

12:06PM 1 Q. OKAY. BUT YOU WERE AWARE THAT THE FINGERSTICK TESTING WAS
12:06PM 2 REALLY THERANOS'S PRIMARY BUSINESS; CORRECT?

12:06PM 3 A. YES.

12:06PM 4 Q. THAT WAS THE GOAL OVER THE FUTURE, TO EXPAND THAT
12:06PM 5 OPERATION AND THE USE OF THEIR PROPRIETARY FINGERSTICK
12:06PM 6 TECHNOLOGY; CORRECT?

12:06PM 7 A. YES.

12:06PM 8 Q. WERE YOU AWARE IN THIS 2013, 2014 TIME PERIOD WHEN YOU
12:07PM 9 INVESTED THAT THERANOS SCIENTISTS HAD FIGURED OUT A WAY TO
12:07PM 10 MODIFY A COMMERCIAL DEVICE, LIKE A SIEMENS DEVICE, TO RUN
12:07PM 11 FINGERSTICK SAMPLES JUST LIKE ITS OWN EDISON? WERE YOU AWARE
12:07PM 12 OF THAT?

12:07PM 13 A. NO.

12:07PM 14 Q. SETTING THAT ASIDE, WERE YOU AWARE OF THE FACT THAT
12:07PM 15 COMMERCIAL LAB EQUIPMENT, LIKE A SIEMENS DEVICE, HAD THE
12:07PM 16 CAPABILITY OF DOING KIND OF HIGH VOLUME TESTING IN ORDER TO
12:07PM 17 FILL KIND OF DEMAND?

12:07PM 18 DID YOU UNDERSTAND THAT?

12:07PM 19 A. I DON'T HAVE A LOT OF KNOWLEDGE ON THE SYSTEMS AND THE
12:07PM 20 PROCESSES OF TESTING BLOOD.

12:07PM 21 Q. OKAY. PERIODICALLY, THOUGH, YOU WOULD KIND OF DO INTERNET
12:07PM 22 SEARCHES TO SEE WHAT YOU COULD LEARN ABOUT THERANOS'S BUSINESS
12:07PM 23 DURING THE TIME BEFORE AND AFTER WHEN YOU INVESTED; RIGHT?

12:07PM 24 A. YES.

12:07PM 25 Q. OKAY. AND YOU WERE AWARE OF THE FACT THAT THERANOS

12:07PM 1 OBTAINED PATENTS FOR ITS TECHNOLOGY; RIGHT? YOU KNEW THAT?

12:07PM 2 A. I KNEW THEY HAD SOME PATENTS, YES.

12:07PM 3 Q. DID YOU EVER READ THE PATENTS?

12:07PM 4 A. NEVER READ A PATENT.

12:08PM 5 Q. OKAY. THEY'RE KIND OF TECHNICAL IN NATURE; RIGHT?

12:08PM 6 A. YES. I WENT TO OREGON STATE UNIVERSITY.

12:08PM 7 Q. FINE SCHOOL, A GREAT BASKETBALL SCHOOL.

12:08PM 8 BUT YOU UNDERSTOOD THAT PATENT APPLICATIONS AND ACTUAL

12:08PM 9 PATENTS, THOSE ARE AVAILABLE ON THE INTERNET; RIGHT?

12:08PM 10 A. I ASSUME SO.

12:08PM 11 Q. YEAH, THE U.S. PTO, YOU CAN KIND OF GO AND DO A SEARCH AND

12:08PM 12 FIND PATENTS THERE?

12:08PM 13 A. I'LL BELIEVE YOU.

12:08PM 14 Q. OKAY. BUT YOU UNDERSTAND THAT'S GENERALLY AVAILABLE;

12:08PM 15 RIGHT?

12:08PM 16 A. SURE. YEAH.

12:08PM 17 Q. AND DID YOU KNOW THAT THERANOS HAD ACTUALLY SUBMITTED AND

12:08PM 18 FILED AND OBTAINED PATENT PROTECTION FOR ITS COMMERCIAL

12:08PM 19 MODIFICATION DEVICES TO RUN FINGERSTICK SAMPLES JUST LIKE THE

12:08PM 20 EDISON?

12:08PM 21 A. I UNDERSTOOD THAT THEY HAD PATENTS, YES.

12:08PM 22 Q. OKAY. BUT YOU DIDN'T KNOW ABOUT THE FACT THAT THEY

12:08PM 23 PATENTED THIS ADDITIONAL TECHNIQUE THAT THEY DEVELOPED TO RUN

12:08PM 24 FINGERSTICK SAMPLES ON A COMMERCIAL DEVICE?

12:08PM 25 A. NO, I WAS NOT AWARE.

12:08PM 1 Q. BUT IF THEY DID SPEND TIME AND RESOURCES, INVESTOR MONEY
12:08PM 2 TO DEVELOP THAT SORT OF TECHNOLOGY AND SCIENCE TO RUN
12:09PM 3 FINGERSTICK SAMPLES ON A COMMERCIAL DEVICE, YOU WOULD HAVE
12:09PM 4 EXPECTED THERANOS TO TAKE STEPS TO PROTECT THAT TECHNOLOGY AS
12:09PM 5 WELL; RIGHT?

12:09PM 6 A. SURE.

12:09PM 7 Q. BECAUSE ULTIMATELY ANYTHING THAT IS THERANOS DEVELOPED
12:09PM 8 TECHNOLOGICALLY COULD BE IN FURTHERANCE OF THE COMPANY'S GROWTH
12:09PM 9 AND PROFITS IN THE FUTURE; RIGHT?

12:09PM 10 A. YES.

12:09PM 11 Q. AND YOU WOULD EXPECT THEM TO PURSUE ANY AVENUE THAT COULD
12:09PM 12 GROW THE BUSINESS; RIGHT?

12:09PM 13 A. YES.

12:09PM 14 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

12:09PM 15 THE COURT: MR. BOSTIC, ANY QUESTIONS?

12:09PM 16 MR. BOSTIC: TWO QUESTIONS, YOUR HONOR.

12:09PM 17 **FURTHER REDIRECT EXAMINATION**

12:09PM 18 BY MR. BOSTIC:

12:09PM 19 Q. MR. MENDENHALL, IN YOUR DISCUSSION WITH MR. BALWANI, DID
12:09PM 20 HE TELL YOU ABOUT ANY PART OF THERANOS'S TECHNOLOGY BESIDES THE
12:09PM 21 SMALL ANALYZER, THE EDISON?

12:09PM 22 A. HE JUST TOLD ME THAT THE TECHNOLOGY WAS DONE AND THERE WAS
12:09PM 23 NO NEW SCIENCE NEEDED AND NO NEW TECHNOLOGY NEEDED.

12:09PM 24 SO I WASN'T -- I DIDN'T KNOW WHAT THAT APPLIED TO. THAT'S
12:10PM 25 WHAT I KNEW WAS DONE, AND IT HAD THE CAPABILITIES OF RUNNING

12:10PM 1 SMALL SAMPLES SUCCESSFULLY ON WHATEVER THE TECHNOLOGY WAS,
12:10PM 2 YEAH.

12:10PM 3 Q. AND BASED ON YOUR CONVERSATION WITH MR. BALWANI, DID YOU
12:10PM 4 HAVE AN UNDERSTANDING AS TO WHETHER THE THERANOS ANALYZER, THE
12:10PM 5 EDISON, WAS UP TO THE TASK OF HANDLING THE TESTING THAT
12:10PM 6 THERANOS WAS OFFERING TO THE PUBLIC?

12:10PM 7 A. THAT WAS MY ASSUMPTION.

12:10PM 8 Q. THAT WHAT?

12:10PM 9 A. THAT THE THERANOS ANALYZER WAS RUNNING THE TEST.

12:10PM 10 Q. THANK YOU.

12:10PM 11 NO FURTHER QUESTIONS.

12:10PM 12 THE COURT: ANYTHING FURTHER?

12:10PM 13 MR. CAZARES: VERY QUICKLY, YOUR HONOR.

12:10PM 14 (LAUGHTER.)

12:10PM 15 MR. CAZARES: I PROMISE IT'S QUICK.

12:10PM 16 **FURTHER RECROSS-EXAMINATION**

12:10PM 17 BY MR. CAZARES:

12:10PM 18 Q. IF WE CAN PUT UP ON THE SCREEN EXHIBIT 4059, WHICH ARE THE
12:11PM 19 NOTES.

12:11PM 20 THE SCREEN IS NOT WORKING? THERE IT GOES.

12:11PM 21 DO YOU HAVE THE EXHIBIT ON YOUR SCREEN, SIR?

12:11PM 22 A. YES.

12:11PM 23 Q. AND AGAIN, YOU WROTE, "NO NEW SCIENCE IS NEEDED"; CORRECT?

12:11PM 24 A. YES.

12:11PM 25 Q. AND THEN "THE 'SCIENCE' BEHIND THERANOS IS COMPLETE";

12:11PM 1 CORRECT?

12:11PM 2 A. YES.

12:11PM 3 Q. AND YOU UNDERSTOOD THAT MEANS THEIR PROPRIETARY

12:11PM 4 TECHNOLOGY; CORRECT?

12:11PM 5 A. THAT'S WHAT I FELT, YES.

12:11PM 6 Q. BUT YOUR NOTES DON'T SAY, LIKE, "THE EDISON"; CORRECT?

12:11PM 7 A. CORRECT.

12:11PM 8 Q. AND WHATEVER THEIR PROPRIETARY FINGERSTICK TECHNOLOGY WAS,

12:11PM 9 THAT'S WHAT YOU WERE BEING TOLD?

12:11PM 10 A. YES.

12:11PM 11 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

12:11PM 12 MR. BOSTIC: NOTHING FURTHER, YOUR HONOR.

12:11PM 13 THE COURT: MAY THIS WITNESS BE EXCUSED?

12:11PM 14 MR. CAZARES: YES, YOUR HONOR.

12:11PM 15 MR. BOSTIC: YES, YOUR HONOR.

12:11PM 16 THE COURT: SIR, YOU'RE EXCUSED.

12:11PM 17 THE WITNESS: THANK YOU.

12:11PM 18 THE COURT: YOU'RE WELCOME.

12:11PM 19 LADIES AND GENTLEMEN, THIS SEEMS LIKE A GOOD TIME TO TAKE

12:11PM 20 OUR BREAK, SO LET'S TAKE 30 MINUTES, 30 MINUTES PLEASE, AND

12:12PM 21 WE'LL SEE YOU BACK THEN. THANK YOU.

12:12PM 22 (RECESS FROM 12:12 P.M. UNTIL 12:46 P.M.)

12:46PM 23 (JURY OUT AT 12:46 P.M.)

24

25

AFTERNOON SESSION

THE COURT: LET'S GO ON THE RECORD.

WE'RE OUTSIDE OF THE PRESENCE OF THE JURY. ALL COUNSEL
ARE PRESENT. MR. BALWANI IS PRESENT.

SHOULD WE RETURN TO OUR CONVERSATION FROM THIS MORNING?
ARE THE MIKES ON?

THE CLERK: SORRY.

MR. SCHENK: YES, YOUR HONOR.

MR. CAZARES: YES, YOUR HONOR.

THE COURT: WHERE ARE WE?

MR. CAZARES: WELL, YOUR HONOR, SO WHERE WE LEFT OFF
IS THIS QUESTION ABOUT WHETHER OR NOT, RAISED BY THE
GOVERNMENT, ABOUT WHETHER THE DEFENSE WOULD BE LIMITED IN ITS
CLOSING ARGUMENTS RELATING TO THE WALGREENS LAUNCH, THE
AFGHANISTAN ISSUE, MAYBE OTHER ISSUES, THROUGH INTRODUCTION OF
THE RECORDINGS FOR -- YOU KNOW, NOT FOR THE TRUTH, FOR SOME
EXCEPTION AND NOT FOR THE TRUTH.

BUT I THINK THE PLACE TO REALLY START IS WE BELIEVE THAT
THERE ARE EXCEPTIONS TO THE HEARSAY RULE THAT WOULD ADMIT THE
TAPES FOR THE TRUTH, AND I DON'T THINK THAT'S INCONSISTENT WITH
THE PRACTICE THAT HAS TAKEN PLACE IN THIS COURT UP UNTIL NOW,
BECAUSE WHAT IS GOING TO HAPPEN IS THAT THE RECORDINGS, WE KNOW
THEY'RE AUTHENTIC. WE KNOW THAT MR. TOLBERT HAS TESTIFIED
ABOUT THEM BEFORE, SO THEY'RE CREDIBLE.

THE GOVERNMENT IS GOING TO INTRODUCE HIS RECOLLECTION

12:47PM 1 ABOUT THE VERY CONFERENCE CALL, AND, YOU KNOW, UNDER RULE 102,
12:47PM 2 UNDER THE BEST EVIDENCE RULE, THE TAPE IS THE ACTUAL BEST
12:47PM 3 EVIDENCE OF WHAT SHE SAID, THE TRUTH OF WHAT SHE SAID, NOT HIS
12:47PM 4 RECOLLECTION.

12:47PM 5 I DON'T THINK THAT'S A CONTROVERSIAL FACT, AND THAT ALONE
12:47PM 6 SHOULD ADMIT THE TAPES.

12:47PM 7 BUT IN ADDITION TO THAT, YOU KNOW, JUST, YOU KNOW, UNDER
12:47PM 8 THE RULE OF COMPLETENESS AND JUST FAIRNESS -- AND I'M NOT
12:47PM 9 SUGGESTING IN ANY WAY THAT THE COURT IS TRYING TO BE UNFAIR --
12:48PM 10 I THINK IT'S IMPORTANT FOR THE JURY TO BE ABLE TO HEAR THE
12:48PM 11 ACTUAL WORDS IF THAT'S WHAT THE GOVERNMENT IS GOING TO ASSERT
12:48PM 12 WERE MISLEADING AND FALSE RATHER THAN RECOLLECTION FROM AN
12:48PM 13 INDIVIDUAL CONVERSATION, YOU KNOW, 12 YEARS AGO OR 10 YEARS AGO
12:48PM 14 ALMOST.

12:48PM 15 SO THAT'S OUR POSITION, THEY SHOULD COME IN FOR THE TRUTH.

12:48PM 16 THE COURT: FOR THE TRUTH?

12:48PM 17 MR. CAZARES: FOR THE TRUTH.

12:48PM 18 THE COURT: OKAY. ALL RIGHT.

12:48PM 19 MR. SCHENK: YOUR HONOR, THIS IS THE SECOND OR THIRD
12:48PM 20 TIME THE DEFENSE HAS CITED THE BEST EVIDENCE RULE TO THE COURT,
12:48PM 21 AND THE SECOND OR THIRD TIME THAT THEY HAVE CITED IT
12:48PM 22 INCORRECTLY.

12:48PM 23 THERE'S A CASE CALLED DIAZ-LOPEZ IN THE NINTH CIRCUIT THAT
12:48PM 24 DISCUSSES SOME OF THE HISTORY OF THE BEST EVIDENCE RULE, AND IT
12:48PM 25 MAKES CLEAR THAT THE BEST EVIDENCE RULE DOES NOT COMPARE TWO

12:48PM 1 DIFFERENT TYPES OF EVIDENCE, TOLBERT'S RECOLLECTION OF THE TAPE
12:48PM 2 WITH THE TAPE, AND THEN INSTRUCTS THE COURT THAT THE TAPE IS
12:48PM 3 THE BETTER OF THE TWO EVIDENCE, IT SHOULD ADMIT THAT ONE.
12:49PM 4 THAT'S NOT HOW THE BEST EVIDENCE RULE WORKS.

12:49PM 5 WHAT THE BEST EVIDENCE RULE IS IS PERMISSION TO ADMIT THE
12:49PM 6 ORIGINAL OF A DOCUMENT WHEN THERE'S A QUESTION ABOUT A COPY OF
12:49PM 7 THAT DOCUMENT.

12:49PM 8 IT DOES NOT COMPARE TWO DIFFERENT TYPES OF EVIDENCE AND
12:49PM 9 TELL THE COURT THAT IT MUST ADMIT THE TAPE BECAUSE THAT'S
12:49PM 10 BETTER THAN MR. TOLBERT'S RECOLLECTION OF IT.

12:49PM 11 SO ONE OF THE BASES THAT YOU JUST HEARD TO ADMIT THE
12:49PM 12 TOLBERT TAPES FOR THE TRUTH IS THE BEST EVIDENCE RULE, AND IT'S
12:49PM 13 DIAZ-LOPEZ, 625 F. 3D 1198, A NINTH CIRCUIT CASE FROM 2010.
12:49PM 14 BUT THIS CASE ALSO COLLECTS SOME OTHER NINTH CIRCUIT CASES THAT
12:49PM 15 CITE THE BEST EVIDENCE RULE FOR THIS SAME CONCEPT.

12:49PM 16 THE COURT, I THINK, ALSO HEARD THE RULE OF COMPLETENESS.
12:49PM 17 WE'VE DISCUSSED THIS MORNING IF THE GOVERNMENT OFFERED, FOR
12:49PM 18 INSTANCE, 1348-1 AND THE DEFENSE FELT THAT 1348-2 WAS NECESSARY
12:50PM 19 IN ORDER TO PROVIDE COMPLETE CONTEXT TO THE JURY, THE COURT
12:50PM 20 COULD ADMIT 1348-2 UNDER THE RULE OF COMPLETENESS.

12:50PM 21 IT DOES NOT SUGGEST THAT IF THE GOVERNMENT ASKS
12:50PM 22 MR. TOLBERT HIS RECOLLECTION OF THE TAPE, THE COURT MUST THEN,
12:50PM 23 FOR COMPLETENESS PURPOSES, ADMIT THE TAPE.

12:50PM 24 THE COURT HAS NOT HEARD A BASIS TO THE HEARSAY RULES THAT
12:50PM 25 ALLOW THE DEFENSE TO OFFER A CODEFENDANT'S STATEMENTS OUT OF

1 COURT FOR THE TRUTH.

2 AND WHAT WE ORIGINALLY CAME TO YOUR HONOR TO DISCUSS THIS
3 MORNING WAS A HEARSAY OBJECTION TO THE DEFENSE PLAYING THE
4 TAPES, AND I STILL HAVEN'T HEARD AN EXCEPTION TO THE HEARSAY
5 RULE THAT PERMITS THE DEFENSE TO PLAY THE TOLBERT TAPES.

6 MR. CAZARES: I MEAN -- I APPRECIATE THE
7 GOVERNMENT'S POSITION, BUT IT'S STILL KIND OF DODGING THE
8 ISSUE, WHICH IS WHY THIS JURY SHOULDN'T BE HEARING THE ACTUAL
9 WORDS OF MS. HOLMES AS OPPOSED TO MR. TOLBERT'S RECOLLECTION
10 BASED ON SOME NOTES OF THE SAME CONVERSATION, BECAUSE THE
11 INFORMATION THAT THE GOVERNMENT WANTS TO CONVEY TO THE JURY IS
12 PURPORTEDLY WHAT MS. HOLMES SAID, NOT HIS INTERPRETATION.

13 MAYBE THEY CAN ASK THAT QUESTION AFTERWARDS. THAT'S
14 ALWAYS A FAIR FOLLOW-UP QUESTION.

15 BUT THE GOVERNMENT WANTS THIS JURY TO TAKE INFERENCES FROM
16 THE WORDS THAT MS. HOLMES MADE IN THAT CONFERENCE CALL AND THAT
17 INFLUENCED MR. TOLBERT AND HIS BOSS TO INVEST, BUT THE
18 GOVERNMENT DOESN'T WANT THE JURY TO HEAR THE ACTUAL WORDS,
19 YOUR HONOR.

20 AND THE RULE OF COMPLETENESS DOES APPLY, NOT ON ITS OWN,
21 BUT IN COMBINATION WITH, YOU KNOW, COMMON LAW 611(A)(1).

22 YOU KNOW, THE COURT IS NOT REQUIRED. OF COURSE NOT. THE
23 COURT ALWAYS HAS DISCRETION ON EVIDENTIARY MATTERS, YOUR HONOR.

24 BUT IT SEEMS IN A SITUATION LIKE THIS WHERE THE GOVERNMENT
25 KNOWS THE TAPES ARE AUTHENTIC, THE GOVERNMENT THEMSELVES EVEN

12:52PM 1 INTRODUCED THEM, OBVIOUSLY NOT BOUND, IN THE PRIOR TRIAL.

12:52PM 2 THE GOVERNMENT NOW WANTS TO LIMIT OR PREVENT THE JURY FROM
12:52PM 3 HEARING THE COMMUNICATION AND THE CONTEXT OF THE COMMUNICATION
12:52PM 4 AND THE DETAILS. THEY WANT TO GIVE THE JURY SNIPPETS, AND THE
12:52PM 5 RULE OF COMPLETENESS AND RULE 611 PERMIT THIS COURT TO ALLOW
12:52PM 6 THE JURY TO SEE AND HEAR THE WHOLE PICTURE AND NOT JUST THE
12:52PM 7 SNIPPETS.

12:52PM 8 AND THAT'S WHAT WE THINK SHOULD HAPPEN HERE, AND THAT'S A
12:52PM 9 RULE THAT WOULD PERMIT THE FACTS TO COME IN FOR THEIR TRUTH.

12:52PM 10 THE GOVERNMENT CAN CONTINUE TO MAKE THEIR ARGUMENTS THAT
12:52PM 11 THEY'RE MISLEADING, AND WE CAN CONTINUE TO MAKE OUR ARGUMENTS
12:52PM 12 THAT WE THINK THERE IS OTHER EVIDENCE THAT SHOWS THOSE
12:52PM 13 STATEMENTS WERE ACCURATE AND CONSISTENT WITH OTHER EVIDENCE IN
12:52PM 14 THE CASE.

12:52PM 15 THE COURT: OKAY. MR. SCHENK, ARE YOU -- YOUR
12:52PM 16 EXAMINATION OF MR. TOLBERT, ARE YOU INTENDING TO INTRODUCE THE
12:52PM 17 TAPES IN YOUR CASE?

12:52PM 18 MR. SCHENK: NOT IN DIRECT, YOUR HONOR.

12:52PM 19 THE COURT: OKAY.

12:53PM 20 AND THEN WHAT IS THE -- YOU'RE SEEKING TO INTRODUCE THE
12:53PM 21 TAPES. YOU WOULD LIKE TO GET THE TAPES IN IN YOUR
12:53PM 22 CROSS-EXAMINATION, WHICH IS YOUR CASE, AND I'M NOT CERTAIN I'VE
12:53PM 23 HEARD YOU TELL ME THE EXCEPTION TO THE HEARSAY RULE, WHY THOSE
12:53PM 24 TAPES SHOULD BE ADMITTED FOR THEIR TRUTH, PARTICULARLY IF
12:53PM 25 THEY'RE THE STATEMENT OF A CODEFENDANT IN THIS PARTICULAR CASE.

12:53PM 1 MR. CAZARES: WELL, I JUST THINK I SAID THE RULE OF
12:53PM 2 COMPLETENESS AND FAIRNESS, YOUR HONOR.

12:53PM 3 THE RULE OF COMPLETENESS REBUTS THE HEARSAY RULE AND ISN'T
12:53PM 4 UNDERMINED BY THE HEARSAY RULE, IT ACTUALLY COMPLEMENTS IT, AND
12:53PM 5 ALLOWS THE JURY TO ACTUALLY HEAR THE WHOLE PICTURE, WHERE THE
12:53PM 6 INITIAL INTRODUCTION OF FACTS OR EVIDENCE DOESN'T NECESSARILY
12:53PM 7 TELL THE WHOLE PICTURE.

12:53PM 8 AND PARTICULARLY WHEN IT'S A FACT OF IMPORTANCE HERE, LIKE
12:54PM 9 MS. HOLMES'S WORDS THAT THE GOVERNMENT HAS CHARGED IN
12:54PM 10 EXECUTION, ONE OF THE COUNTS IS THE TOLBERT-HALL INVESTMENT,
12:54PM 11 THEY'RE POINTING TO HER WORDS BUT SAYING, NO, THE JURY
12:54PM 12 SHOULDN'T HEAR THOSE WORDS BECAUSE IT MIGHT BE HEARSAY AND
12:54PM 13 IGNORE THESE OTHER BASES THAT WOULD PERMIT THE JURY TO HEAR
12:54PM 14 THOSE FACTS.

12:54PM 15 WE JUST THINK THAT THAT'S NOT CONSISTENT WITH COMMON LAW
12:54PM 16 AND THE RULE OF COMPLETENESS.

12:54PM 17 YOU KNOW, THERE ARE HEARSAY EXCEPTIONS THAT WOULD NOT BE
12:54PM 18 FOR THE TRUTH. WE DON'T THINK THOSE ARE APPROPRIATE, BUT TO BE
12:54PM 19 FRANK, YOUR HONOR, WE HAVE SOME CONCERNS THAT WE'RE SOMEHOW
12:54PM 20 GOING TO BE LIMITED IN OUR CLOSING ARGUMENT, WHICH WE DON'T
12:54PM 21 THINK WOULD BE APPROPRIATE, THAT KIND OF TIES OUR HANDS,
12:54PM 22 YOUR HONOR.

12:54PM 23 THE COURT: WELL, I HAVEN'T SAID TODAY THAT I WOULD
12:54PM 24 LIMIT YOU IN ANY WAY. I HAVE NOT SAID THAT.

12:54PM 25 BUT WHAT I SAID BEFORE WE STARTED THIS MORNING WAS, I

12:54PM 1 THINK ALL PARTIES SHOULD LOOK AND TAKE A MEASURED VIEW AS TO
12:55PM 2 WHAT IT IS THE PARTIES SEEK TO INTRODUCE AND WHAT IMPACT, IF
12:55PM 3 ANY, THAT MIGHT HAVE.

12:55PM 4 I'M NOT SUGGESTING THE COURT HAS MADE ANY DECISION ON
12:55PM 5 ANYTHING IN THAT REGARD. I'M JUST TRYING TO LET EVERYBODY
12:55PM 6 KNOW, CHECK YOURSELVES, CHECK YOUR CASES, MAKE SURE WHEN YOU
12:55PM 7 ASK FOR SOMETHING, YOU KNOW, IT'S WHAT YOU WANT AND YOU'VE
12:55PM 8 FULLY CONSIDERED IT.

12:55PM 9 I'M NOT LOOKING YOU AT AND THE DEFENSE. I'M TALKING ABOUT
12:55PM 10 BOTH SIDES.

12:55PM 11 MR. CAZARES: I UNDERSTAND, YOUR HONOR.

12:55PM 12 THE COURT: RIGHT.

12:55PM 13 BOTH SIDES, WHEN YOU TAKE ACTIONS THERE ARE CONSEQUENCES
12:55PM 14 FOR THAT.

12:55PM 15 I JUST WANTED TO MAKE SURE EVERYBODY HAD A MEASURED
12:55PM 16 APPROACH AND HAD AN OPPORTUNITY TO REVIEW THAT.

12:55PM 17 I WAS NOT SAYING, IF YOU DO THIS, I'M GOING TO LIMIT YOU.

12:55PM 18 THE DISCUSSION WAS, WELL, IF THIS COMES IN AND IF IT COMES
12:55PM 19 IN IN THIS WAY, WE MIGHT BE ASKING THIS. AND THAT -- FROM THE
12:55PM 20 GOVERNMENT'S PERSPECTIVE. AND THAT MIGHT CAUSE SOME
12:55PM 21 LIMITATIONS.

12:55PM 22 MY POINT THIS MORNING WAS, LET'S ALL STEP BACK AND THINK
12:55PM 23 ABOUT WHERE WE ARE BEFORE WE CALL THE WITNESS IN TO MAKE SURE
12:55PM 24 THAT WE UNDERSTAND THE FULL, THE FULL RAMIFICATIONS OF WHAT WE
12:55PM 25 DO.

12:55PM 1 I'M GLAD YOU'VE DONE THAT. THANKS FOR THAT.

12:56PM 2 ANYTHING FURTHER ON THIS?

12:56PM 3 MR. SCHENK: SUBMIT IT.

12:56PM 4 MR. CAZARES: SUBMIT IT.

12:56PM 5 THE COURT: OKAY. THANK YOU.

12:56PM 6 IF THERE'S -- IF THE GOVERNMENT IS NOT GOING TO PUT THESE

12:56PM 7 IN, I DON'T SEE GROUNDS TO ALLOW THE DEFENSE AT THIS TIME TO

12:56PM 8 PUT THESE IN. SO I DON'T KNOW IF THAT WAS A REQUEST TO ADMIT

12:56PM 9 AT THIS STAGE OR NOT.

12:56PM 10 BUT I WOULD INDICATE, AS THE RECORD IS RIGHT NOW, I WOULD

12:56PM 11 NOT PERMIT IT. LET ME JUST INDICATE THAT.

12:56PM 12 MR. CAZARES: UNDERSTOOD, YOUR HONOR. OKAY.

12:56PM 13 THE COURT: OKAY. SO WE'RE READY FOR MR. TOLBERT I

12:56PM 14 TAKE IT.

12:56PM 15 MR. SCHENK: YES.

12:56PM 16 THE COURT: OKAY.

12:56PM 17 MR. COOPERSMITH: YOUR HONOR, I HAVE ONE THING, ONE

12:56PM 18 MINOR THING TO RAISE IF I CAN.

12:56PM 19 THE COURT: SURE.

12:56PM 20 MR. COOPERSMITH: THANK YOU, YOUR HONOR. I

12:56PM 21 APPRECIATE IT.

12:56PM 22 I WILL JUST SAY ONE THING. I HAVE NEVER SEEN BEFORE IN A

12:56PM 23 FRAUD CASE --

12:56PM 24 THE COURT: YOU'RE GOING TO TALK ABOUT MY DECISION

12:56PM 25 THAT I JUST MADE?

12:56PM 1 MR. COOPERSMITH: WELL, NO, YOUR HONOR. I'LL HOLD
12:57PM 2 MY TONGUE ON THAT.

12:57PM 3 THE COURT: OKAY. YOU HAD ONE OTHER THING.

12:57PM 4 MR. COOPERSMITH: YES, YOUR HONOR.

12:57PM 5 THE ONE OTHER THING IS THAT WE HAVE A CONCERN ABOUT SOME
12:57PM 6 OF THE QUESTIONING WE SAW WITH MR. MENDENHALL, AND WE'VE SEEN
12:57PM 7 IT WITH OTHER WITNESSES, AND I THINK IT'S IMPORTANT TO RAISE.

12:57PM 8 AND THE CONCERN WE HAVE IS THAT THE QUESTION TO
12:57PM 9 MR. MENDENHALL -- AND AGAIN, WITH OTHER WITNESSES, WE EXPECT
12:57PM 10 THERE WILL BE OTHER INVESTORS WHO TESTIFY, SO THE SAME ISSUE
12:57PM 11 MAY ARISE AGAIN -- IS THAT MR. BOSTIC ASKED THE WITNESS, DID
12:57PM 12 YOU KNOW THAT THE EDISON DEVICE COULD ONLY DO 12 TESTS?

12:57PM 13 AND IF MR. BOSTIC WANTS TO ASK, DID YOU KNOW IT WAS
12:57PM 14 ACTUALLY DOING 12 TESTS, THAT'S FAIR GAME, OKAY, BECAUSE THAT
12:57PM 15 IS TRUE. THE EVIDENCE ESTABLISHES THAT THERANOS WAS RUNNING
12:57PM 16 THE EDISON FOR ABOUT 12 TESTS AT THE PEAK OF IT.

12:57PM 17 BUT IF THE QUESTION IS, COULD IT DO OR IS IT CAPABLE,
12:57PM 18 THERE IS NO QUESTION THAT THE EDISON -- I'M SORRY. THERE IS NO
12:58PM 19 EVIDENCE THAT THE EDISON WAS NOT CAPABLE OF RUNNING ADDITIONAL
12:58PM 20 IMMUNOASSAYS.

12:58PM 21 IN FACT, THE EVIDENCE IS THAT IT COULD RUN IMMUNOASSAYS,
12:58PM 22 AND THERE'S FAR MORE IMMUNOASSAYS THAN JUST THE 12, AND THAT
12:58PM 23 CAME IN WITH MS. CHEUNG.

12:58PM 24 SO I THINK THE PROPER QUESTION THAT MR. BOSTIC COULD
12:58PM 25 ASK -- AGAIN, PUTTING ASIDE THE ISSUE OF OMISSIONS, WHICH IS

12:58PM 1 ANOTHER ISSUE IN THE CASE -- BUT IN TERMS OF THE FAIR QUESTION
12:58PM 2 WITH A GOOD FAITH BASIS, IT'S, DID YOU KNOW THAT THE EDISON WAS
12:58PM 3 ONLY RUNNING 12 TESTS IN THE LAB? NOT, DID YOU KNOW IT COULD
12:58PM 4 ONLY RUN?

12:58PM 5 I DON'T THINK THAT'S ESTABLISHED BY THE EVIDENCE, AND IT'S
12:58PM 6 NOT, IN OUR VIEW, A GOOD FAITH QUESTION, SO I WANTED TO RAISE
12:58PM 7 THAT.

12:58PM 8 THE COURT: WAS THERE AN OBJECTION OF --

12:58PM 9 MR. COOPERSMITH: THERE WAS. A FOUNDATION
12:58PM 10 OBJECTION, YOUR HONOR.

12:58PM 11 THE COURT: -- ASSUMING FACTS NOT IN EVIDENCE?

12:58PM 12 MR. COOPERSMITH: I THINK IT WAS FOUNDATION, WHICH I
12:58PM 13 THINK AMOUNTS TO THE SAME THING.

12:58PM 14 MR. BOSTIC: SO, YOUR HONOR, I DISAGREE WITH THE
12:58PM 15 DEFENSE'S INTERPRETATION OF THE QUESTION.

12:58PM 16 FIRST OF ALL, IT MAY BE THAT I ASKED THE QUESTION IN THE
12:59PM 17 WAY THAT MR. COOPERSMITH IS RECITING.

12:59PM 18 BUT I THINK, IN CASE IT MATTERS, IS THAT WHAT I ACTUALLY
12:59PM 19 ASKED IS, WERE YOU TOLD?

12:59PM 20 SO MY QUESTION ACTUALLY IS NOT, STRICTLY SPEAKING,
12:59PM 21 ASSUMING FACTS. IT'S ASKING WHETHER MR. BALWANI MADE CERTAIN
12:59PM 22 REPRESENTATIONS TO HIM.

12:59PM 23 TO THE CENTRAL ISSUE, THOUGH, IT SOUNDS LIKE THIS COMES
12:59PM 24 DOWN TO A DEFINITION OF THE WORD "COULD," WHICH MIGHT BE A
12:59PM 25 LITTLE TOO SEMANTIC FOR PURPOSES OF SETTING UP GUARDRAILS FOR

12:59PM 1 HOW QUESTIONS COULD BE FORMULATED.

12:59PM 2 THE FACT IS THAT, AND I THINK THE EVIDENCE SHOWS THIS,
12:59PM 3 THAT THERANOS WANTED TO RUN MORE TESTS ON THE EDISON, IT WORKED
12:59PM 4 TO PUT MORE TESTS ON ITS EDISON DEVICE, IT ONLY EVER GOT TO 12.

12:59PM 5 MY UNDERSTANDING IS THAT ONLY 12 TESTS WERE VALIDATED FOR
12:59PM 6 USE IN THE CLIA LAB.

12:59PM 7 WHETHER THE DEVICE COULD HAVE BEEN USED TO RUN ADDITIONAL
12:59PM 8 TESTS, WHETHER THERANOS MIGHT HAVE BEEN SUCCESSFUL HAD IT TRIED
01:00PM 9 HARDER TO VALIDATE ADDITIONAL TESTS I THINK IS A HYPOTHETICAL
01:00PM 10 THAT DOESN'T MAKE THAT QUESTION IMPROPER.

01:00PM 11 I THINK THE COMPANY WANTED TO USE ITS TECHNOLOGY, ITS
01:00PM 12 DEVICE FOR AS MUCH AS POSSIBLE, AND 12 WAS THE MAXIMUM THAT IT
01:00PM 13 ACHIEVED DURING THE RELEVANT TIME PERIOD.

01:00PM 14 THE COURT: OKAY. ALL RIGHT.

01:00PM 15 MR. COOPERSMITH: YOUR HONOR, I'M SORRY. I DON'T
01:00PM 16 THINK THERE'S ANY EVIDENCE THAT THE EVIDENCE COULD ONLY DO.

01:00PM 17 AT THE END OF THE DAY, OUR TOOL AS LAWYERS AND JUDGES IS
01:00PM 18 WORDS. SO IT MAY WELL COME DOWN TO A DEFINITION OF THE WORD
01:00PM 19 "COULD," AND THAT'S IMPORTANT.

01:00PM 20 BUT THERE'S NO EVIDENCE, AGAIN, THAT THE EDISON COULD ONLY
01:00PM 21 DO 12 TESTS, MEANING IT WAS ONLY CAPABLE OF DOING 12 TESTS, AND
01:00PM 22 I JUST DON'T THINK THERE'S A GOOD FAITH BASIS FOR THAT
01:00PM 23 QUESTION, AND THAT'S OUR CONCERN AND WE WOULD ASK THE COURT TO
01:00PM 24 TELL THE GOVERNMENT NOT TO DO THAT.

01:00PM 25 MR. BOSTIC: I'M HAPPY TO ANSWER ANY CONCERNS OR

01:00PM 1 QUESTIONS THAT THE COURT MIGHT HAVE, BUT I DISAGREE WITH THE
01:00PM 2 DEFENSE'S POSITION.

01:00PM 3 THE COURT: OKAY. LET'S SEE WHERE QUESTIONS GO, AND
01:00PM 4 IF THE OBJECTION IS MADE, THE COURT WILL RULE ON IT.

01:01PM 5 OKAY. THANK YOU.

01:01PM 6 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:01PM 7 MR. BOSTIC: THANK YOU, YOUR HONOR.

01:01PM 8 (RECESS FROM 1:01 P.M. UNTIL 1:04 P.M.)

01:04PM 9 (JURY IN AT 1:04 P.M.)

01:04PM 10 THE COURT: WE'RE BACK ON THE RECORD.

01:04PM 11 ALL OF THE PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE
01:04PM 12 AGAIN.

01:04PM 13 DOES THE GOVERNMENT HAVE A WITNESS TO CALL?

01:05PM 14 MR. SCHENK: YES, YOUR HONOR.

01:05PM 15 THE GOVERNMENT CALLS BRYAN TOLBERT.

01:05PM 16 THE COURT: GOOD AFTERNOON, SIR.

01:05PM 17 IF YOU WOULD COME FORWARD, PLEASE. JUST STAND RIGHT OVER
01:05PM 18 HERE BY THE WITNESS STAND.

01:05PM 19 IF YOU COULD FACE OUR COURTROOM DEPUTY WHILE YOU RAISE
01:05PM 20 YOUR RIGHT HAND, SHE HAS A QUESTION FOR YOU.

01:05PM 21 **(GOVERNMENT'S WITNESS, JOHN BRYAN TOLBERT, WAS SWORN.)**

01:05PM 22 THE WITNESS: YES, MA'AM.

01:05PM 23 THE COURT: PLEASE HAVE A SEAT HERE, SIR.

01:05PM 24 I'LL INVITE YOU TO MAKE YOURSELF COMFORTABLE.

01:05PM 25 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

01:05PM 1 NEED.

01:05PM 2 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

01:05PM 3 AND THEN SPELL IT, PLEASE.

01:05PM 4 THE WITNESS: JOHN BRYAN TOLBERT. J-O-H-N,

01:05PM 5 B-R-Y-A-N, T-O-L-B-E-R-T.

01:05PM 6 THE COURT: THANK YOU. COUNSEL.

01:05PM 7 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR.

01:05PM 8 **DIRECT EXAMINATION**

01:05PM 9 BY MR. SCHENK:

01:05PM 10 Q. GOOD AFTERNOON, MR. TOLBERT. IF YOU ARE FULLY VACCINATED,

01:05PM 11 I UNDERSTAND THE COURT WILL PERMIT YOU TO TESTIFY WITHOUT A

01:06PM 12 MASK ON.

01:06PM 13 A. I AM FULLY VACCINATED.

01:06PM 14 THE COURT: YES. THANK YOU.

01:06PM 15 MR. SCHENK: THANK YOU, YOUR HONOR.

01:06PM 16 Q. MR. TOLBERT, DO YOU WORK FOR A COMPANY CALLED HALL GROUP?

01:06PM 17 A. YES, SIR.

01:06PM 18 Q. AND WHILE WORKING AT HALL, DID YOU BECOME FAMILIAR WITH A

01:06PM 19 COMPANY CALLED THERANOS?

01:06PM 20 A. I DID.

01:06PM 21 Q. DO YOU REMEMBER WHEN YOU INITIALLY BECAME FAMILIAR WITH

01:06PM 22 THERANOS?

01:06PM 23 A. IN THE FALL OF 2006.

01:06PM 24 Q. IN AROUND THAT TIME, DID THE HALL GROUP MAKE AN INVESTMENT

01:06PM 25 IN THERANOS?

01:06PM 1

A. WE DID.

01:06PM 2

Q. AND WAS THAT THE ONLY INVESTMENT THAT HALL MADE IN

01:06PM 3

THERANOS?

01:06PM 4

A. IN 2006 IT WAS. WE HAD INVESTED ABOUT \$2 MILLION.

01:06PM 5

WE HAD A SUBSEQUENT INVESTMENT IN DECEMBER OF 2013.

01:06PM 6

THOSE WERE THE TWO INVESTMENTS THAT WE MADE.

01:06PM 7

Q. SO HALL MADE TWO SEPARATE INVESTMENTS, ONE IN 2006 AND THE

01:06PM 8

OTHER IN DECEMBER OF 2013?

01:06PM 9

A. CORRECT.

01:06PM 10

Q. WOULD YOU DESCRIBE TO THE JURY FIRST WHAT WORK, OR WHAT

01:07PM 11

LINE OF WORK THE HALL GROUP IS INVOLVED IN?

01:07PM 12

A. THE HALL GROUP IS A PRIVATE INVESTMENT COMPANY, SO WE DO A

01:07PM 13

LOT OF WORK AROUND REAL ESTATE, INVESTING IN REAL ESTATE

01:07PM 14

INVESTMENT. WE HAVE WINE OPERATIONS IN NAPA VALLEY.

01:07PM 15

AND WE DO PRIVATE INVESTING IN COMPANIES, YOU KNOW, OF ALL

01:07PM 16

DIFFERENT KIND OF SHAPES AND SIZES.

01:07PM 17

Q. WHERE IS HALL LOCATED?

01:07PM 18

A. OUR HEADQUARTERS ARE IN DALLAS, TEXAS.

01:07PM 19

Q. AND THEN HOW ABOUT YOUR JOB AT THE HALL GROUP? WHAT DO

01:07PM 20

YOU DO THERE?

01:07PM 21

A. SO MY JOB IS RELATED TO FINANCE. SO I DO CORPORATE

01:07PM 22

FINANCE KIND OF WORK, BUDGETS AND CASH FLOWS.

01:07PM 23

I ALSO OVERSEE OUR VENTURE INVESTING, SO INVESTMENTS THAT

01:07PM 24

WE MAKE IN PUBLIC AND PRIVATE COMPANIES.

01:07PM 25

Q. AND WHAT IS YOUR JOB TITLE?

01:07PM 1 A. SENIOR VICE PRESIDENT AND TREASURER.

01:07PM 2 Q. AND WHEN YOU SAY YOU OVERSEE VENTURE INVESTING, DID THE

01:08PM 3 TWO THERANOS INVESTMENTS THAT YOU TOLD US ABOUT FALL WITHIN

01:08PM 4 THAT PART OF YOUR JOB?

01:08PM 5 A. THEY WOULD HAVE COME UNDER THAT UMBRELLA, YES.

01:08PM 6 Q. SO DID YOU OVERSEE THE INVESTMENT THAT HALL MADE IN 2006

01:08PM 7 AND AGAIN IN 2013?

01:08PM 8 A. I DID.

01:08PM 9 Q. WOULD YOU BRIEFLY DESCRIBE FOR THE JURY YOUR EDUCATIONAL

01:08PM 10 BACKGROUND?

01:08PM 11 A. SO I HAVE A BACHELOR'S DEGREE FROM THE UNIVERSITY OF

01:08PM 12 GEORGIA, AND A MASTER'S IN BUSINESS FROM BRIGHAM YOUNG IN

01:08PM 13 PROVO.

01:08PM 14 Q. AND HOW LONG HAVE YOU WORKED AT HALL GROUP?

01:08PM 15 A. I STARTED AT HALL GROUP IN 1999, SO 23 YEARS.

01:08PM 16 Q. AND HAVE YOUR JOB RESPONSIBILITIES, HAVE THEY CHANGED IN

01:08PM 17 THAT PERIOD OF TIME?

01:08PM 18 A. THEY HAVE. SO I STARTED OFF AS A FINANCIAL ANALYST, AND,

01:08PM 19 YOU KNOW, HAVE BEEN THERE LONG ENOUGH THAT I HAVE HAD MORE

01:08PM 20 RESPONSIBILITY OVER TIME.

01:08PM 21 Q. I'D LIKE TO NOW FOCUS YOUR ATTENTION ON THE 2006 TIME

01:08PM 22 PERIOD WHEN YOU SAID THAT HALL MADE THIS INITIAL INVESTMENT IN

01:09PM 23 THERANOS.

01:09PM 24 DO YOU REMEMBER HOW THERANOS CAME ON TO YOUR RADAR?

01:09PM 25 A. SO MY BOSS, CRAIG HALL, HAD APPROACHED ME ONE DAY AND

01:09PM 1 SAID, YOU KNOW, I HAD A CONVERSATION WITH A FRIEND ABOUT A
01:09PM 2 POTENTIAL INVESTMENT IN A COMPANY NAMED THERANOS, HERE'S THE
01:09PM 3 INFORMATION THAT I HAVE. I WOULD LIKE YOU TO REVIEW IT AND
01:09PM 4 LET'S HAVE MORE CONVERSATIONS ABOUT IT.

01:09PM 5 SO HE HAD, HE HAD BROUGHT IT TO ME AND SAID, LOOK, THIS IS
01:09PM 6 AN OPPORTUNITY THAT HAS PRESENTED ITSELF.

01:09PM 7 Q. AND THEN DID YOU TAKE EFFORTS TO LEARN MORE ABOUT
01:09PM 8 THERANOS?

01:09PM 9 A. WE DID. I DID, YEAH.

01:09PM 10 Q. AND WHAT WERE THOSE EFFORTS?

01:09PM 11 A. OH, WHAT WERE THE EFFORTS?

01:09PM 12 WE HAD SCHEDULED A SERIES OF PHONE CALLS WITH THE PEOPLE
01:09PM 13 WHO HAD INTRODUCED US TO THE OPPORTUNITY, AS WELL AS WITH THE
01:09PM 14 COMPANY, WITH THERANOS AND ELIZABETH HOLMES, AS WELL AS DOING
01:09PM 15 SOME OTHER DUE DILIGENCE AROUND THAT TIME.

01:10PM 16 Q. WHEN YOU SAID THAT THERE WERE SOME INDIVIDUALS OR I THINK
01:10PM 17 FRIENDS OF MR. HALL WHO BROUGHT THE OPPORTUNITY TO YOU, THOSE
01:10PM 18 INDIVIDUALS DID NOT WORK AT THERANOS, DID THEY?

01:10PM 19 A. THEY DID NOT.

01:10PM 20 Q. THEY WERE INDIVIDUALS THAT MR. HALL KNEW FROM OTHER PARTS
01:10PM 21 OF HIS LIFE; IS THAT CORRECT?

01:10PM 22 A. THAT'S CORRECT. IT WAS FROM A FRIEND WHO I THINK HAD BEEN
01:10PM 23 A PRIOR INVESTOR IN THERANOS AND WHO HAD REACHED OUT TO HIM AND
01:10PM 24 SAID, I KNOW ABOUT AN OPPORTUNITY TO MAKE AN INVESTMENT IN
01:10PM 25 THERANOS, AND SO THAT'S HOW THE OPPORTUNITY KIND OF CAME TO US.

01:10PM 1 Q. DO YOU RECALL THAT INDIVIDUAL'S NAME?

01:10PM 2 A. THAT INDIVIDUAL'S NAME IS GARY NORDHEIMER.

01:10PM 3 Q. CAN YOU SPELL THAT LAST NAME FOR US?

01:10PM 4 A. I BELIEVE IT'S N-O-R-D-H-E-I-M-E-R.

01:10PM 5 Q. THANK YOU.

01:10PM 6 AND YOU DESCRIBED, I THINK -- IN ADDITION TO SPEAKING WITH
01:10PM 7 MR. NORDHEIMER, DID YOU ALSO SPEAK TO ELIZABETH HOLMES?

01:10PM 8 A. WE DID.

01:10PM 9 Q. AND WAS THAT ON THE TELEPHONE OR IN PERSON? WHAT DO YOU
01:11PM 10 RECALL ABOUT THAT?

01:11PM 11 A. IT WAS A TELEPHONE CALL. WE HAD A CONFERENCE CALL WITH,
01:11PM 12 AS I REMEMBER, WITH ELIZABETH AND -- YOU KNOW, MAYBE A LITTLE
01:11PM 13 CONTEXT IS HELPFUL.

01:11PM 14 SO MR. NORDHEIMER HAD CALLED MR. HALL AND SAID THERE IS AN
01:11PM 15 OPPORTUNITY TO POTENTIALLY INVEST IN THIS COMPANY THAT I'M
01:11PM 16 AFFILIATED WITH NAMED THERANOS.

01:11PM 17 HE HAD INVESTED THROUGH A FRIEND OF HIS NAMED CHRIS LUCAS.

01:11PM 18 AND SO AS I RECALL, THOSE PHONE CALLS THAT WE HAD WITH THE
01:11PM 19 COMPANY, WITH THERANOS AND WITH ELIZABETH, WERE ALSO WITH
01:11PM 20 CHRIS LUCAS. CHRIS IS THE ONE WHO WOULD HAVE ORGANIZED THESE
01:11PM 21 CALLS WITH US.

01:11PM 22 Q. I SEE. SO THIS INITIAL 2006 TIMEFRAME INCLUDED A PHONE
01:11PM 23 CONVERSATION WITH MR. NORDHEIMER, WITH MR. LUCAS, AND WHO ELSE?

01:11PM 24 A. WELL, MR. NORDHEIMER WOULD NOT HAVE BEEN ON THE CALL. HE
01:11PM 25 JUST MADE US AWARE OF THE OPPORTUNITY.

01:11PM 1 AND THEN MR. LUCAS WOULD HAVE ORGANIZED THE CALL WITH
01:12PM 2 ELIZABETH AND MR. HALL AND MYSELF.

01:12PM 3 Q. SO DID YOU PARTICIPATE IN A PHONE CALL WITH
01:12PM 4 ELIZABETH HOLMES?

01:12PM 5 A. I DID.

01:12PM 6 Q. AND DID YOU ALSO GO OUT TO PALO ALTO TO VISIT THERANOS?

01:12PM 7 A. AFTER THAT INITIAL PHONE CALL, THERE WAS ENOUGH INTEREST
01:12PM 8 ON OUR PART THAT I DID TAKE A TRIP OUT TO CALIFORNIA TO VISIT
01:12PM 9 WITH HER AND CHRIS LUCAS.

01:12PM 10 Q. AND WAS THAT ALSO IN 2006?

01:12PM 11 A. THAT WOULD HAVE BEEN IN PROBABLY NOVEMBER OF 2006.

01:12PM 12 Q. ON THE PHONE AND WHEN YOU WENT IN PERSON, DID YOU EVER
01:12PM 13 SPEAK WITH SOMEONE NAMED SUNNY BALWANI?

01:12PM 14 A. I DID NOT.

01:12PM 15 Q. SO YOU DIDN'T MEET HIM, EXCUSE ME, WHEN YOU WENT TO
01:12PM 16 CALIFORNIA IN 2006?

01:12PM 17 A. I DID NOT.

01:12PM 18 Q. AND HOW ABOUT IN 2013? YOU DESCRIBED TO THE JURY BRIEFLY
01:12PM 19 AN INVESTMENT THAT WAS MADE IN 2013.

01:12PM 20 DID YOU EVER SPEAK WITH MR. BALWANI AT THAT TIME?

01:12PM 21 A. I HAVE NEVER SPOKEN WITH MR. BALWANI.

01:12PM 22 Q. PERIOD? NOT IN 2006 OR 2013 AT ANY POINT?

01:12PM 23 A. NO, NEVER. TODAY IS THE FIRST TIME THAT I HAVE EVER SEEN
01:13PM 24 MR. BALWANI IN PERSON.

01:13PM 25 Q. THANK YOU.

01:13PM 1 I WANT TO TALK ABOUT WHAT YOU LEARNED ABOUT THERANOS IN
01:13PM 2 2006, AND THEN I'LL ASK YOU TO COMPARE THAT TO WHAT YOU LEARNED
01:13PM 3 IN 2013.

01:13PM 4 SO LET'S START WITH 2006. WHEN YOU WERE EITHER SPEAKING
01:13PM 5 TO MS. HOLMES ON THE PHONE OR IN PALO ALTO, DID YOU LEARN ABOUT
01:13PM 6 THE LINE OF BUSINESS THAT THERANOS WAS INVOLVED IN?

01:13PM 7 A. I DID. WE -- SO WHEN I CAME TO CALIFORNIA AND MET WITH
01:13PM 8 MS. HOLMES, WE HAD DINNER TOGETHER WITH MR. LUCAS AND WITH HIS
01:13PM 9 UNCLE, DON LUCAS, AND WE TALKED ABOUT THE COMPANY AND THE
01:13PM 10 VISION OF THE COMPANY AND, YOU KNOW, THE ABILITY OR THE VISION
01:13PM 11 TO TAKE DROPS OF BLOOD AND PERFORM TESTS ON THAT AND TO BE ABLE
01:13PM 12 TO HAVE RESULTS COME BACK AND, YOU KNOW, KIND OF IN REALTIME AS
01:13PM 13 IT WERE AND BE COMMUNICATED TO THE DOCTORS WHO HAD ORDERED
01:14PM 14 THOSE TESTS.

01:14PM 15 Q. YOU HAVE USED THE WORD "VISION."

01:14PM 16 WHAT DO YOU MEAN BY THAT?

01:14PM 17 A. WELL, IN 2006 IT WAS THE VERY BEGINNING AS THE OPERATIONS
01:14PM 18 OF THE COMPANY WERE JUST STARTING, AND SO THE VISION WAS THAT,
01:14PM 19 YOU KNOW, THERE WOULD BE A LOT OF THINGS THAT WOULD BE
01:14PM 20 DEVELOPED OVER TIME AROUND THIS INITIAL IDEA OF TAKING SMALL,
01:14PM 21 YOU KNOW, DROPS OF BLOOD AND DOING TESTS ON THEM.

01:14PM 22 Q. AND YOU SAID THAT IT WAS EARLY ON.

01:14PM 23 WHAT DID YOU MEAN BY THAT?

01:14PM 24 A. WELL, I THINK THE COMPANY WAS STILL, YOU KNOW, IN THE
01:14PM 25 BEGINNING STAGES. I DON'T KNOW WHEN THE FIRST INVESTMENTS HAD

01:14PM 1 BEEN MADE. YOU KNOW, I THINK A YEAR OR TWO PRIOR TO WHEN OUR
01:14PM 2 INVESTMENT WAS MADE IN 2006.

01:14PM 3 SO I THINK, YOU KNOW, THE COMPANY HAD COME TO A POINT AT
01:14PM 4 THAT TIME -- THIS WAS NOVEMBER, DECEMBER OF 2006 -- WHERE THEY
01:14PM 5 HAD SOME MACHINES THAT WERE BUILT, SOME CARTRIDGES THAT BLOOD
01:14PM 6 COULD GO ON, AND THEY WERE STARTING TO BE ABLE TO DO THAT KIND
01:14PM 7 OF TESTING.

01:15PM 8 AS WE INVESTED IN 2006, YOU KNOW, MY UNDERSTANDING WAS
01:15PM 9 THAT THEY WERE ABLE TO DO SOME OF THAT TESTING FOR
01:15PM 10 PHARMACEUTICAL COMPANIES.

01:15PM 11 AND SO THERE WAS A PRODUCT AND IT HAD BEEN DEVELOPED AND
01:15PM 12 IT WAS OPERATIONAL, BUT IT WASN'T PERFECTED, RIGHT? THERE WAS
01:15PM 13 A LOT OF, A LOT OF KIND OF ADD ON THINGS OR DEVELOPMENT THAT
01:15PM 14 COULD -- IT WAS ANTICIPATED TO TAKE PLACE FROM THEN FORWARD.

01:15PM 15 Q. THANK YOU.

01:15PM 16 SO YOU UNDERSTOOD IN 2006 THAT THE TECHNOLOGY WAS NOT
01:15PM 17 PERFECTED; IS THAT RIGHT?

01:15PM 18 A. CORRECT.

01:15PM 19 Q. AND THEN YOU'VE DESCRIBED TO THE JURY SOME OF WHAT YOU
01:15PM 20 UNDERSTOOD THE INVESTMENT IN THERANOS, OR AT LEAST WHAT
01:15PM 21 THERANOS WAS INVOLVED IN.

01:15PM 22 WHERE DID YOU GET THAT UNDERSTANDING? FROM WHOM?

01:15PM 23 A. SO THAT UNDERSTANDING WOULD HAVE COME FROM, YOU KNOW, MY
01:15PM 24 CONVERSATIONS WITH ELIZABETH AND FROM THE INFORMATION THAT SHE
01:15PM 25 AND CHRIS HAD PROVIDED ABOUT THE COMPANY.

01:15PM 1 Q. AND WHEN IN 2006 WAS THE DECISION MADE TO INVEST?

01:16PM 2 A. IT WAS MADE, AS I RECALL, IN NOVEMBER OR DECEMBER OF 2006.

01:16PM 3 Q. AND I THINK YOU TOLD THE JURY THE AMOUNT, BUT PLEASE

01:16PM 4 REMIND US.

01:16PM 5 A. YOU KNOW, HALL HAD INVESTED \$2 MILLION.

01:16PM 6 YOU KNOW, SUBSEQUENTLY, THERE WERE A FEW PEOPLE WHO WERE

01:16PM 7 ALLOWED TO PARTICIPATE IN THAT ON OUR SIDE, SO I THINK HALL'S

01:16PM 8 ACTUAL INVESTMENT WAS LIKE A MILLION 875.

01:16PM 9 Q. AND WHEN YOU SAY "HALL," DO YOU MEAN HALL GROUP?

01:16PM 10 A. THAT'S CORRECT.

01:16PM 11 Q. AND WAS THE INVESTMENT A DIRECT INVESTMENT IN THERANOS?

01:16PM 12 A. IT WAS NOT. SO, YOU KNOW, I HAD MENTIONED THAT

01:16PM 13 MR. NORDHEIMER HAD BROUGHT THIS OPPORTUNITY TO US THROUGH HIS

01:16PM 14 INVESTMENT IN CHRIS LUCAS'S COMPANY.

01:16PM 15 SO WHEN WE MADE THE DECISION TO INVEST, WE INVESTED IN AN

01:16PM 16 INVESTMENT VEHICLE THAT CHRIS LUCAS HAD ESTABLISHED TO INVEST

01:16PM 17 IN THERANOS, AND SO WE INVESTED THROUGH MR. LUCAS'S COMPANY.

01:17PM 18 Q. SO YOU PROVIDED YOUR MONEY TO MR. LUCAS TO MAKE AN

01:17PM 19 INVESTMENT IN THERANOS; IS THAT RIGHT?

01:17PM 20 A. CORRECT.

01:17PM 21 Q. IS THAT DIFFERENT THAN THE STRUCTURE OF THE 2013

01:17PM 22 INVESTMENT?

01:17PM 23 A. IT IS.

01:17PM 24 SO ULTIMATELY IN 2013, WHEN WE MADE THE DECISION TO MAKE A

01:17PM 25 FURTHER INVESTMENT, WE WANTED TO HAVE A DIRECT RELATIONSHIP

01:17PM 1 WITH THE COMPANY, NOT, YOU KNOW, NOT THROUGH AN INTERMEDIARY,
01:17PM 2 SO WE MADE A DIRECT INVESTMENT IN 2013.

01:17PM 3 Q. IN 2006 WHEN YOU WERE DECIDING WHETHER TO INVEST, DID YOU
01:17PM 4 VIEW THE INVESTMENT AS A RISKY INVESTMENT?

01:17PM 5 A. YOU KNOW, CERTAINLY BY NATURE OF INVESTING IN THOSE KINDS
01:17PM 6 OF COMPANIES, THERE WAS RISK ASSOCIATED WITH IT IN 2006.

01:17PM 7 Q. TELL US ABOUT THAT.

01:17PM 8 WHAT DID YOU VIEW THE RISKS OF THE INVESTMENT IN 2006 TO
01:17PM 9 REALLY BE?

01:17PM 10 A. SO, YOU KNOW, THERE WAS A MULTITUDE OF RISKS, RIGHT?
01:18PM 11 THERE WAS RISK THAT ONCE THE TESTS WERE DEVELOPED OR ONCE THE
01:18PM 12 TECHNOLOGIES WERE DEVELOPED, THAT THEY COULDN'T BE MANUFACTURED
01:18PM 13 COST EFFICIENTLY.

01:18PM 14 THERE WERE, YOU KNOW, RISKS THAT THE SCIENCE I GUESS
01:18PM 15 WOULDN'T WORK, THAT THE TESTS WOULDN'T BE ABLE TO BE PERFECTED,
01:18PM 16 OR THAT THE NUMBER OF TESTS THAT COULD BE DONE WOULDN'T BE ABLE
01:18PM 17 TO, YOU KNOW, DEVELOP IN A WAY THAT WOULD MAKE IT INTO A
01:18PM 18 PROFITABLE INVESTMENT.

01:18PM 19 Q. AND WHEN YOU INVESTED IN 2013, DID YOU THINK THAT THE SAME
01:18PM 20 RISKS WERE PRESENT OR DIFFERENT?

01:18PM 21 A. WE DID NOT. WE FELT LIKE THE RISKS HAD BEEN MITIGATED A
01:18PM 22 LOT, THAT BETWEEN 2006 AND 2013, THERE WERE SEVEN YEARS WORTH
01:18PM 23 OF DEVELOPMENT AND THAT IT HAD HAPPENED.

01:18PM 24 OUR UNDERSTANDING WAS THAT THE COMMERCIAL APPLICATIONS OF
01:18PM 25 THE TECHNOLOGY HAD BEEN DEVELOPED IN A WAY THAT, YOU KNOW,

01:19PM 1 PRESENTED GREAT OPPORTUNITIES.

01:19PM 2 AND IN 2013, THE PRIMARY RISK WAS ONE OF ROLLING THE
01:19PM 3 TECHNOLOGY OUT AND COMMERCIALIZING IT, YOU KNOW, FOR A MASS
01:19PM 4 RETAILER CONSUMER AUDIENCE.

01:19PM 5 BUT IT FELT LIKE THE UNDERLYING SCIENCE AND THE ABILITY OF
01:19PM 6 THE TECHNOLOGY TO DO WHAT -- TO DO THE TESTS AND PERFORM
01:19PM 7 ACCURATE RESULTS HAD BEEN LARGELY ACCOMPLISHED.

01:19PM 8 Q. DID YOU GET INFORMATION FROM SOMEONE AT THERANOS IN
01:19PM 9 ADVANCE OF YOUR 2013 INVESTMENT THAT MADE YOU EVALUATE THESE
01:19PM 10 RISKS DIFFERENTLY, THE 2006 VERSUS THE 2013 RISKS?

01:19PM 11 A. YOU KNOW, I GUESS IF IT'S HELPFUL, A LITTLE CONTEXT.

01:19PM 12 SO BETWEEN 2006 AND 2013, YOU KNOW, I HAD MULTIPLE
01:19PM 13 CONVERSATIONS WITH MR. LUCAS EVERY YEAR TALKING ABOUT, YOU
01:19PM 14 KNOW, WHAT THE COMPANY WAS ACCOMPLISHING, YOU KNOW, WHAT
01:20PM 15 DEVELOPMENTS THERE HAD BEEN.

01:20PM 16 AND THEN IN 2013, YOU KNOW, WE WANTED TO BE A DIRECT
01:20PM 17 INVESTOR SO THAT WE WOULD HAVE AN ABILITY TO HAVE MORE DIRECT
01:20PM 18 COMMUNICATIONS FROM THE COMPANY.

01:20PM 19 AND SO, YOU KNOW, AS WE KIND OF CAME INTO THAT OPPORTUNITY
01:20PM 20 IN 2013, WE DID SEEK AN OPPORTUNITY TO VISIT WITH MS. HOLMES
01:20PM 21 DIRECTLY ABOUT THAT, AND SO WE HAD SOME DIRECT CONVERSATIONS
01:20PM 22 WITH HER ABOUT THE STATE OF THE BUSINESS AND WHAT WAS GOING ON.

01:20PM 23 Q. SO THEN AGAIN, BEFORE YOU INVESTED IN 2013, YOU HAD
01:20PM 24 FURTHER CONVERSATIONS WITH MS. HOLMES; IS THAT RIGHT?

01:20PM 25 A. CORRECT.

01:20PM 1 Q. YOU MENTIONED IT BRIEFLY. LET'S TALK ABOUT THAT A LITTLE
01:20PM 2 BIT MORE.

01:20PM 3 THE TIME PERIOD AFTER YOUR 2006 INVESTMENT LEADING UP TO
01:20PM 4 THE INVESTMENT IN 2013, DID YOU HAVE ANY COMMUNICATION WITH
01:20PM 5 MS. HOLMES DURING THAT PERIOD OF TIME?

01:20PM 6 A. NOT DIRECTLY THAT I REMEMBER.

01:20PM 7 Q. WERE YOU GETTING ANY INFORMATION ABOUT THERANOS AT THAT
01:21PM 8 TIME?

01:21PM 9 A. YEAH. LIKE I MENTIONED, I WOULD HAVE PERIODIC PHONE CALLS
01:21PM 10 WITH MR. LUCAS. YOU KNOW, MY UNDERSTANDING WAS THAT HE WAS
01:21PM 11 GETTING REGULAR UPDATES FROM ELIZABETH AND FROM THE COMPANY.

01:21PM 12 AND SO ANY TIME IT FELT LIKE HE HAD RECEIVED THAT, HE
01:21PM 13 WOULD CALL ME AND WE WOULD TALK THROUGH THOSE, OR I WOULD
01:21PM 14 PROMPT HIM TO HAVE A PHONE CALL AND TALK ABOUT WHAT THE MOST
01:21PM 15 RECENT DEVELOPMENTS HAD BEEN.

01:21PM 16 Q. SO IS IT FAIR TO SAY THAT CHRIS LUCAS, IN FACT, WAS YOUR
01:21PM 17 SOURCE OF INFORMATION ABOUT THERANOS BETWEEN THE TWO
01:21PM 18 INVESTMENTS?

01:21PM 19 A. YEAH, DIRECT INFORMATION.

01:21PM 20 I MEAN, CERTAINLY KIND OF THROUGH THAT TIME WE TRIED TO
01:21PM 21 FIND OTHER WAYS TO VALIDATE WHAT HE WAS TELLING US, RIGHT? WE
01:21PM 22 DID INTERNET SEARCHES AND OTHERWISE.

01:21PM 23 BUT HE WAS THE PRIMARY SOURCE OF INFORMATION DIRECT AT
01:21PM 24 THAT TIME.

01:21PM 25 Q. GREAT. SO NOW I'D LIKE TO BRING YOU UP TO 2013.

01:21PM 1 YOUR HONOR, MAY I APPROACH?

01:21PM 2 THE COURT: YES.

01:21PM 3 MR. SCHENK: (HANDING.)

01:22PM 4 Q. MR. TOLBERT, IF I COULD DRAW YOUR ATTENTION TO TAB 3940 IN
01:22PM 5 THE BINDER IN FRONT OF YOU.

01:22PM 6 YOUR HONOR, THE DEFENSE AND I BELIEVE THE COURT HAVE A
01:22PM 7 COPY?

01:22PM 8 THE COURT: THANK YOU.

01:22PM 9 BY MR. SCHENK:

01:22PM 10 Q. MR. TOLBERT, DO YOU SEE THE EMAIL AT 3940?

01:22PM 11 A. I DO.

01:22PM 12 Q. AND IS THIS ONE OF THE COMMUNICATIONS YOU'VE DESCRIBED TO
01:22PM 13 THE JURY FROM MR. LUCAS TO YOU ABOUT THERANOS?

01:22PM 14 A. IT IS.

01:22PM 15 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 3940.

01:22PM 16 MR. CAZARES: NO OBJECTION.

01:22PM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:22PM 18 (GOVERNMENT'S EXHIBIT 3940 WAS RECEIVED IN EVIDENCE.)

01:23PM 19 BY MR. SCHENK:

01:23PM 20 Q. MR. TOLBERT, DO YOU SEE THIS EMAIL IN JULY OF 2013 FROM
01:23PM 21 CHRIS LUCAS?

01:23PM 22 A. I DO.

01:23PM 23 Q. WAS JULY, THIS LATTER PART OF JULY 2013, THE BEGINNING OF
01:23PM 24 A PERIOD OF TIME WHEN YOU BEGAN TO RECEIVE MORE INFORMATION
01:23PM 25 FROM THERANOS?

01:23PM 1 A. IT WAS. SO MR. LUCAS AND I HAD, YOU KNOW, CONVERSATIONS
01:23PM 2 COMING INTO 2013 AND KIND OF THROUGH THIS PERIOD THAT THE
01:23PM 3 COMPANY WAS IN A PLACE THAT IT WAS GOING TO BE MORE PUBLIC WITH
01:23PM 4 INFORMATION.

01:23PM 5 I THINK, YOU KNOW, THERE HAD BEEN SOME REFERENCE THAT THEY
01:23PM 6 WERE COMING OUT OF STEALTH MODE, AND SO THIS WAS THE FIRST
01:23PM 7 THING THAT I REMEMBER THAT WAS, YOU KNOW, KIND OF PUBLIC
01:23PM 8 INFORMATION THAT HE HAD SENT OVER.

01:23PM 9 Q. AND YOU USED A PHRASE, "STEALTH MODE."

01:23PM 10 WHAT DOES THAT MEAN?

01:23PM 11 A. WELL, JUST -- YOU KNOW, DURING THE PERIOD FROM 2006
01:24PM 12 ONWARD, WE KNEW THAT THE COMPANY WAS TRYING TO DO THINGS IN A
01:24PM 13 WAY THAT WOULDN'T ALERT COMPETITORS OR PROVOKE A COMPETITIVE
01:24PM 14 RESPONSE AND WOULD ALLOW THEM TO DEVELOP THIS TECHNOLOGY IN A
01:24PM 15 WAY THAT, YOU KNOW, THAT DIDN'T -- THAT KIND OF WASN'T PUBLIC
01:24PM 16 TO THE WORLD UNTIL IT WAS PERFECTED.

01:24PM 17 SO THAT'S WHAT I MEANT WHEN I SAID STEALTH MODE.

01:24PM 18 Q. AND YOU, I THINK, DESCRIBED THAT THERANOS WAS COMING OUT
01:24PM 19 OF STEALTH MODE.

01:24PM 20 A. THAT'S RIGHT. SO WE HAD COME TO THIS PLACE WHERE THEY HAD
01:24PM 21 PUBLISHED ON THEIR WEBSITE AND CHRIS HAD INDICATED THAT THERE
01:24PM 22 WAS GOING TO BE KIND OF MORE AND MORE OF THAT COMING IN A
01:24PM 23 PUBLIC WAY.

01:24PM 24 Q. DID LEAVING STEALTH MODE SAY ANYTHING TO YOU ABOUT THE
01:24PM 25 MATURITY OF THE TECHNOLOGY?

01:24PM 1 A. IT CERTAINLY GAVE US CONFIDENCE THAT THE TECHNOLOGY HAD
01:24PM 2 BEEN, YOU KNOW, DEVELOPED AND PERFECTED IN A WAY THAT NOW IT
01:24PM 3 WAS READY TO KIND OF HAVE SCRUTINY FROM THE OUTSIDE WORLD.

01:25PM 4 Q. IN THE EMAIL IT LOOKS LIKE MR. LUCAS MAKES REFERENCE TO
01:25PM 5 RECEIVING MORE COMMUNICATION FROM THE COMPANY.

01:25PM 6 DO YOU SEE THAT?

01:25PM 7 A. CORRECT.

01:25PM 8 Q. AND DID YOU SHARE THAT SENTIMENT?

01:25PM 9 A. I DID.

01:25PM 10 Q. WHY?

01:25PM 11 A. WELL, YOU KNOW, THROUGH THOSE INTERVENING YEARS, 2006
01:25PM 12 UNTIL 2013, YOU KNOW, WE WERE EXCITED ABOUT THIS OPPORTUNITY,
01:25PM 13 AND IT FELT LIKE THERE WAS GREAT PROGRESS BEING MADE, SO, YOU
01:25PM 14 KNOW, IT FELT LIKE WE HAD REASON TO BELIEVE THAT THIS WAS GOING
01:25PM 15 TO BE A VERY SUCCESSFUL INVESTMENT.

01:25PM 16 ON TOP OF THE FACT THAT IT WAS, YOU KNOW -- THAT THE
01:25PM 17 INVESTMENT WAS BASED ON SOMETHING THAT WE FELT GOOD ABOUT.

01:25PM 18 YOU KNOW, I DON'T LIKE GOING TO THE DOCTOR AND HAVING BIG
01:25PM 19 VIALS OF BLOOD DRAWN, SO WE WERE EXCITED NOT ONLY ABOUT WHAT
01:26PM 20 THE COMPANY WAS GOING TO DO, BUT THE WAY THEY WERE DOING IT.

01:26PM 21 AND SO AS THINGS WERE BECOMING MORE AND MORE READY TO BE
01:26PM 22 ROLLED OUT, IT FELT LIKE THAT MEANT THAT THINGS WERE -- THAT
01:26PM 23 THEY WERE WORKING AND THAT WE WERE EXCITED TO BE ABLE TO HAVE
01:26PM 24 MORE VISIBILITY INTO THE PROGRESS.

01:26PM 25 Q. THANK YOU.

01:26PM 1 WOULD YOU NOW TURN TO THE FIRST TAB IN YOUR BINDER. IT'S
01:26PM 2 949.

01:26PM 3 MR. TOLBERT, IS THIS A GROUP OF EMAILS FROM THERANOS TO
01:26PM 4 YOU THROUGH INDIVIDUALS THAT WORK WITH MR. LUCAS?

01:26PM 5 A. IT IS.

01:26PM 6 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 949.

01:26PM 7 MR. CAZARES: NO OBJECTION.

01:26PM 8 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:26PM 9 (GOVERNMENT'S EXHIBIT 949 WAS RECEIVED IN EVIDENCE.)

01:26PM 10 BY MR. SCHENK:

01:27PM 11 Q. MR. TOLBERT, IF WE CAN START ON PAGE 2.

01:27PM 12 DO YOU SEE AN EMAIL FROM THERANOS TO THERANOS ON
01:27PM 13 JULY 29TH, 2013?

01:27PM 14 A. I DO.

01:27PM 15 Q. AND THE EMAIL IS FROM SOMETHING CALLED
01:27PM 16 SHAREHOLDERINFO@THERANOS.COM.

01:27PM 17 DO YOU SEE THAT?

01:27PM 18 A. I DO.

01:27PM 19 Q. WITHIN THE BODY IT LOOKS LIKE IT SAYS, "DEAR SHAREHOLDER,
01:27PM 20 "IT IS WITH GREAT PLEASURE THAT I WRITE TO INFORM YOU OF
01:27PM 21 OUR UPCOMING CONSUMER LAUNCH."

01:27PM 22 AND THEN IT CONTINUES.

01:27PM 23 "WE HAVE BEEN WORKING IN STEALTH MODE FOR SEVERAL YEARS TO
01:27PM 24 PREPARE FOR THIS."

01:27PM 25 AND THEN THE NEXT PARAGRAPH.

01:27PM 1 "WE WILL BEGIN SENDING INFORMATION TO OUR SHAREHOLDERS
01:27PM 2 THROUGH EMAIL BRIEFS."

01:27PM 3 DO YOU SEE THAT?

01:27PM 4 A. I DO.

01:27PM 5 Q. SO AFTER THIS TIME, JULY OF 2013, DID YOU, IN FACT, BEGIN
01:27PM 6 TO GET MORE INFORMATION FROM THERANOS OVER EMAIL?

01:27PM 7 A. A LITTLE BIT MORE INFORMATION. CERTAINLY MORE THAN WE HAD
01:28PM 8 PRIOR TO THIS.

01:28PM 9 Q. MORE COMPARED TO 2006 THROUGH 2012?

01:28PM 10 A. 2006 THROUGH 2012, YEAH. WE HAD NOTHING DIRECT IN THOSE
01:28PM 11 INTERVENING YEARS, AND SO, YES, THIS REPRESENTS THE FIRST KIND
01:28PM 12 OF TIME THAT WE HAD HEARD DIRECTLY FROM THE COMPANY.

01:28PM 13 Q. THANK YOU.

01:28PM 14 AND THEN IN THE NEXT PARAGRAPH, DO YOU SEE THAT THERE'S A
01:28PM 15 REFERENCE TO THE FIRST NEW WEBSITE CONTENT IS UP TODAY?

01:28PM 16 A. I DO.

01:28PM 17 Q. AND THE COMPANY, IT LOOKS LIKE, IS ISSUING A PRESS
01:28PM 18 RELEASE.

01:28PM 19 DO YOU SEE THAT?

01:28PM 20 A. I DO.

01:28PM 21 Q. AND THEN IF WE TURN TO THE NEXT PAGE, PAGE 3, IT LOOKS
01:28PM 22 LIKE IT'S THEN SIGNED OFF BY ELIZABETH, ELIZABETH HOLMES.

01:28PM 23 DO YOU SEE THAT?

01:28PM 24 A. I DO.

01:28PM 25 Q. BELOW THAT IT LOOKS AS THOUGH IT SAYS, "THERANOS ANNOUNCED

01:28PM 1 TODAY THAT RICHARD M. KOVACEVICH AND GENERAL JAMES MATTIS WERE
01:29PM 2 APPOINTED TO ITS BOARD OF DIRECTORS."

01:29PM 3 WAS THIS THE PRESS RELEASE THAT WAS REFERENCED IN THE BODY
01:29PM 4 OF THE EMAIL?

01:29PM 5 A. IT IS.

01:29PM 6 Q. AND THEN BELOW A LITTLE FURTHER DOWN THERE'S A SECTION
01:29PM 7 THAT SAYS, "FOR ADDITIONAL PRESS LINKS," AND THEN THERE ARE
01:29PM 8 SOME CITATIONS TO ARTICLES, SOME CLICKABLE LINKS.

01:29PM 9 DO YOU SEE THAT?

01:29PM 10 A. YES.

01:29PM 11 Q. SOMETHING ON MARKET WATCH AND CNBC.

01:29PM 12 DO YOU HAVE A RECOLLECTION AS TO WHETHER YOU FOLLOWED
01:29PM 13 THOSE LINKS AND READ ARTICLES ABOUT THERANOS AT THE TIME?

01:29PM 14 A. I CERTAINLY WOULD HAVE FOLLOWED THOSE AND READ THEM.

01:29PM 15 Q. AND HOW ABOUT INFORMATION IN THE PRESS MORE GENERALLY, NOT
01:29PM 16 JUST THESE TWO CITATIONS, BUT LEADING UP TO AN INVESTMENT LATER
01:29PM 17 IN 2013, WAS INFORMATION IN THE PRESS ALSO SOMETHING THAT YOU
01:29PM 18 REVIEWED AND USED TO EVALUATE AN INVESTMENT DECISION?

01:29PM 19 A. CERTAINLY IT WAS. I MEAN, WE WERE -- YOU KNOW, I WAS
01:29PM 20 DOING GOOGLE SEARCHES EVERY FEW DAYS AT THIS POINT.

01:29PM 21 Q. WHY?

01:29PM 22 A. YOU KNOW, AS INFORMATION BECAME MORE PUBLIC AND MORE
01:30PM 23 AVAILABLE, WE WERE INTERESTED TO SEE HOW IT WAS RECEIVED AND
01:30PM 24 PORTRAYED, AND JUST TO HAVE AS MUCH VISIBILITY AS WE COULD INTO
01:30PM 25 WHAT WAS GOING ON.

01:30PM 1 Q. THANK YOU.

01:30PM 2 NOW, IF YOU CAN GO TO THE FIRST PAGE OF THIS DOCUMENT,

01:30PM 3 949. IT LOOKS LIKE THERE ARE A COUPLE OF EMAILS FROM SOMEONE

01:30PM 4 NAMED ANA QUINTANA.

01:30PM 5 DO YOU SEE THAT?

01:30PM 6 A. I DO.

01:30PM 7 Q. AND DO YOU KNOW WHO MS. QUINTANA IS?

01:30PM 8 A. YEAH, SHE IS ONE OF THE PRINCIPALS AT BLACK DIAMOND

01:30PM 9 VENTURES, WHICH IS CHRIS LUCAS'S FUND. SO SHE'S AN EMPLOYEE

01:30PM 10 WITH CHRIS AT BLACK DIAMOND VENTURES.

01:30PM 11 Q. I SEE. AND IT REFERENCES IN BOTH EMAILS INFORMATION ABOUT

01:30PM 12 SHAREHOLDER LETTERS, OR SHAREHOLDER UPDATES.

01:30PM 13 DO YOU SEE THAT?

01:30PM 14 A. I DO.

01:30PM 15 Q. AND WAS THAT INFORMATION PROVIDED TO YOU BECAUSE OF YOUR

01:30PM 16 INVESTMENT IN THERANOS, BUT THROUGH BLACK DIAMOND VENTURES?

01:31PM 17 A. CORRECT.

01:31PM 18 Q. THANK YOU.

01:31PM 19 IF WE CAN NOW TURN TO PAGE -- I'M SORRY, EXHIBIT 4030?

01:31PM 20 MR. TOLBERT, DO YOU SEE THE EMAIL AND ATTACHMENTS LOCATED

01:31PM 21 AT 4030?

01:31PM 22 A. I DO.

01:31PM 23 Q. AND IS THIS ALSO INFORMATION THAT YOU RECEIVED FROM

01:31PM 24 BLACK DIAMOND VENTURES REGARDING YOUR THERANOS INVESTMENT?

01:31PM 25 A. YES.

01:31PM 1 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4030.

01:31PM 2 MR. CAZARES: NO OBJECTION.

01:31PM 3 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

01:31PM 4 (GOVERNMENT'S EXHIBIT 4030 WAS RECEIVED IN EVIDENCE.)

01:31PM 5 BY MR. SCHENK:

01:31PM 6 Q. IF WE CAN START ON PAGE 1.

01:32PM 7 DO YOU SEE THIS EMAIL? IT LOOKS LIKE IT'S FROM SOMEONE

01:32PM 8 NAMED YASMIN IBARRA?

01:32PM 9 A. I DO.

01:32PM 10 Q. AND DOES SHE ALSO WORK FOR CHRIS LUCAS'S FUND,

01:32PM 11 BLACK DIAMOND?

01:32PM 12 A. YEAH, SHE DID.

01:32PM 13 Q. SHE DID?

01:32PM 14 A. I DON'T KNOW IF SHE DOES NOW, BUT SHE DID.

01:32PM 15 Q. THANK YOU.

01:32PM 16 SO WE'VE NOW MOVED INTO NOVEMBER OF 2013, AND IT -- IT'S

01:32PM 17 AN EMAIL SENT TO BLACK DIAMOND INVESTORS.

01:32PM 18 DO YOU SEE THAT?

01:32PM 19 A. I DO.

01:32PM 20 Q. AND IT LOOKS LIKE IT INCLUDES SOME INFORMATION ABOUT

01:32PM 21 THERANOS, SOME SLIDES; IS THAT RIGHT?

01:32PM 22 A. YES. SO EVERY YEAR BLACK DIAMOND VENTURES WOULD HAVE AN

01:32PM 23 INVESTOR UPDATE IN THE ANNUAL MEETING WHERE THEY WOULD UPDATE

01:32PM 24 THE INVESTORS ON ALL OF THE PORTFOLIO COMPANIES THAT THEY HAD,

01:32PM 25 AND THIS WAS, YOU KNOW, THE FIRST ONE THAT INCLUDED A

01:32PM 1 SUBSTANTIAL UPDATE ON THERANOS.

01:32PM 2 Q. I WOULD LIKE TO ASK YOU SOME QUESTIONS ABOUT A FEW SLIDES.

01:32PM 3 WOULD YOU START WITH PAGE 6.

01:33PM 4 ON PAGE 6, DO YOU SEE -- AT THE VERY BOTTOM THERE'S SOME

01:33PM 5 TEXT THAT READS, "FOR THE FIRST TIME, THERANOS IS INTRODUCING

01:33PM 6 CLIA-CERTIFIED LABORATORY SERVICES WITH THE ABILITY TO RUN ITS

01:33PM 7 TESTS ON MICRO-SAMPLES."

01:33PM 8 DO YOU SEE THAT?

01:33PM 9 A. I DO.

01:33PM 10 Q. WAS THAT CONSISTENT WITH YOUR UNDERSTANDING OF THE

01:33PM 11 THERANOS TECHNOLOGY?

01:33PM 12 A. IT IS.

01:33PM 13 Q. AND TALK TO ME FOR A MOMENT ABOUT WHETHER THIS IS AN

01:33PM 14 EVOLUTION FROM YOUR UNDERSTANDING IN 2006.

01:33PM 15 A. YEAH. SO CERTAINLY IN 2006 WHEN WE INVESTED, WE KNEW

01:33PM 16 THAT, YOU KNOW, AS THE TECHNOLOGY DEVELOPED AND, YOU KNOW,

01:33PM 17 WANTED TO BE CONSUMER FACING, THAT THE FDA OR OTHER AGENCIES

01:33PM 18 WOULD HAVE TO CERTIFY IT. THERE WOULD HAVE TO BE, YOU KNOW,

01:33PM 19 SOME BLESSINGS -- TESTING THAT WOULD HAVE BEEN RUN AND

01:34PM 20 BLESSINGS THAT WOULD HAVE BEEN GIVEN TO THE TECHNOLOGY.

01:34PM 21 AND SO THROUGH THOSE INTERVENING YEARS, CHRIS AND I TALKED

01:34PM 22 A LOT ABOUT, YOU KNOW, WHAT HAD BEEN SUBMITTED FOR FDA

01:34PM 23 APPROVAL, OR WHAT THE STATUS OF THAT WAS.

01:34PM 24 SO FOR THE FIRST TIME IN 2013, AS I REMEMBER, THIS WAS --

01:34PM 25 KIND OF AROUND THIS TIMEFRAME IS THE FIRST TIME THAT WE KNEW

01:34PM 1 THAT THAT HAD BEEN GRANTED AND THAT, YOU KNOW, IT MEANT THAT
01:34PM 2 THERE HAD BEEN SOME VALIDATION OF THE TECHNOLOGY AND THE
01:34PM 3 ABILITY TO KIND OF TRUST WHAT THE RESULTS WERE THAT WAS COMING
01:34PM 4 FROM THOSE TESTS.

01:34PM 5 Q. I SEE. AND WHEN YOU'RE TALKING ABOUT FDA GRANTING
01:34PM 6 SOMETHING, ARE YOU REFERRING TO THE PHRASE "CLIA-CERTIFIED" ON
01:34PM 7 THIS DOCUMENT?

01:34PM 8 A. NO. I'M SORRY.

01:34PM 9 SO MY UNDERSTANDING WAS THAT THE FDA COULD APPROVE
01:34PM 10 DIFFERENT TESTS, AND THAT THERE WAS ALSO A CLIA-CERTIFIED
01:34PM 11 LABORATORY -- THERE WAS A CLIA CERTIFICATION THAT COULD COME
01:35PM 12 FROM CMS, MEDICARE, MEDICAID, AN AGENCY THAT WOULD OFFER THAT
01:35PM 13 CERTIFICATION.

01:35PM 14 SO I THINK THIS WAS DIFFERENT FROM THE FDA, BUT IT WAS
01:35PM 15 STILL KIND OF -- YOU KNOW, WE SAW THOSE CERTIFICATIONS AS
01:35PM 16 VALIDATIONS AS TO WHAT THE TECHNOLOGY COULD DO.

01:35PM 17 Q. I SEE. SO THE CLIA CERTIFICATION THAT WAS BEING ANNOUNCED
01:35PM 18 HERE, BEING SHARED WITH YOU, YOU UNDERSTOOD WAS SOME SORT OF
01:35PM 19 VALIDATION OF THE THERANOS TECHNOLOGY?

01:35PM 20 A. I DID.

01:35PM 21 Q. AND I ASKED YOU TO COMPARE THAT TO WHAT YOU UNDERSTOOD IN
01:35PM 22 2006. HOW DID THIS SLIDE INFLUENCE OR CAUSE YOUR THINKING TO
01:35PM 23 EVOLVE BASED ON WHAT YOU KNEW IN 2006?

01:35PM 24 A. YEAH. SO IN 2006, LIKE I INDICATED, WE -- THERE WEREN'T
01:35PM 25 ANY OF THESE IN PLACE, AND WE KNEW THAT THOSE WOULD BE, YOU

01:35PM 1 KNOW, SOUGHT AFTER AND GRANTED, THE CERTIFICATIONS FROM
01:36PM 2 DIFFERENT AGENCIES.

01:36PM 3 THE FACT THAT IT WAS NOW CERTIFIED IN 2013, YOU KNOW,
01:36PM 4 MEANT THAT THE TECHNOLOGY HAD PROGRESSED IN A WAY THAT IT
01:36PM 5 COULD, AS I UNDERSTOOD, GO OUT TO CONSUMERS.

01:36PM 6 AND SO, YOU KNOW, CERTAINLY IF THERANOS WOULD HAVE COME
01:36PM 7 OUT AND SAID, YOU KNOW, WE MADE AN APPLICATION FOR THESE
01:36PM 8 CERTIFICATIONS AND WE DIDN'T GET THEM, WE WERE DENIED, THEN,
01:36PM 9 YOU KNOW, WE WOULD NOT HAVE PURSUED AN INVESTMENT.

01:36PM 10 BUT, YOU KNOW, THIS VALIDATION KIND OF ENCOURAGED US THAT
01:36PM 11 THE TECHNOLOGY WAS, WAS CONSUMER READY.

01:36PM 12 Q. THANK YOU.

01:36PM 13 IF YOU WOULD NOW TURN TO THE NEXT PAGE, PAGE 7.

01:36PM 14 DO YOU SEE HERE IN THE MIDDLE THE PHRASE "THE LAB TEST,
01:36PM 15 REINVENTED."

01:36PM 16 AND THEN AN IMAGE?

01:36PM 17 A. I DO.

01:36PM 18 Q. AND WHEN YOU SAW THE PHRASE "THE LAB TEST, REINVENTED,"
01:36PM 19 PAST TENSE, "REINVENTED," DID THAT CHANGE YOUR THINKING BASED
01:36PM 20 ON WHAT YOU UNDERSTOOD THERANOS TO BE DOING IN 2006 VERSUS NOW
01:37PM 21 IN 2013?

01:37PM 22 A. I GUESS -- LET ME ANSWER THE QUESTION AND SAY, YOU KNOW,
01:37PM 23 WHEN I READ THIS, I DIDN'T THINK THAT THIS HAD BEEN REINVENTED
01:37PM 24 AT THIS MOMENT IN TIME.

01:37PM 25 I MEAN, WE HAD FELT LIKE THIS EVOLUTION THROUGH THE YEARS

01:37PM 1 WAS THE REINVENTION, THAT IT WAS NOW AT A POINT WHERE IT HAD
01:37PM 2 BEEN REINVENTED.

01:37PM 3 BUT IT WASN'T JUST THIS WEEK, BUT, YOU KNOW, IT HAD BEEN
01:37PM 4 THE PROCESS ALONG THE WAY.

01:37PM 5 Q. I SEE. YOU FELT -- I'M SORRY, GO AHEAD.

01:37PM 6 A. BUT WHEN I READ THIS, YOU KNOW, IT FELT LIKE THAT
01:37PM 7 REINVENTION WAS COMPLETE, AND THEN CERTAINLY THERE WOULD BE
01:37PM 8 MORE EVOLUTIONS GOING FORWARD.

01:37PM 9 BUT THAT IT WAS, YOU KNOW, ABLE TO -- THAT THE TESTS WERE
01:37PM 10 ABLE TO BE DONE ON THESE SMALL SAMPLES.

01:37PM 11 Q. AND WHEN YOU SAY "THE TESTS," YOU MEAN TESTING BLOOD --

01:37PM 12 A. BLOOD TESTS.

01:37PM 13 Q. THANK YOU.

01:37PM 14 IF YOU WOULD NOW TURN TO THE NEXT PAGE, PAGE 8.

01:37PM 15 AND UNDER "WELCOME TO THERANOS," THERE'S A PARAGRAPH THAT
01:38PM 16 I'D LIKE TO ASK YOU A QUESTION ABOUT.

01:38PM 17 DO YOU SEE THAT PARAGRAPH THAT BEGINS, "THERANOS'S
01:38PM 18 LABORATORY"?

01:38PM 19 A. YES.

01:38PM 20 Q. "THERANOS'S LABORATORY CAN ANALYZE SMALLER SAMPLES THAN
01:38PM 21 PREVIOUSLY POSSIBLE WITH SPEED AND THE HIGHEST LEVELS OF
01:38PM 22 ACCURACY. IT IS EASIER ON YOUR PATIENTS. AND HELPS YOU MAKE
01:38PM 23 THE BEST DIAGNOSIS AS FAST AS POSSIBLE."

01:38PM 24 THERE'S A REFERENCE HERE TO TESTING ON SMALLER SAMPLES
01:38PM 25 WITH SPEED AND THE HIGHEST LEVELS OF ACCURACY.

01:38PM 1 HOW ABOUT THAT PHRASE, "HIGHEST LEVELS OF ACCURACY"? WAS
01:38PM 2 THAT SIGNIFICANT IN YOUR EVALUATION IN 2013 AS TO WHETHER TO
01:38PM 3 MAKE AN INVESTMENT?

01:38PM 4 A. IT WAS. GIVEN THAT THE TESTS WERE ABLE TO BE DONE
01:38PM 5 ACCURATELY OBVIOUSLY, YOU KNOW, WOULD HAVE FACTORED INTO THAT
01:38PM 6 INVESTMENT DECISION.

01:38PM 7 IF THE TEST WOULD HAVE BEEN INACCURATE OR WOULD HAVE ONLY
01:39PM 8 BEEN 50 PERCENT ACCURATE, THEN, YOU KNOW, IT PROBABLY WOULD
01:39PM 9 HAVE CAUSED A DIFFERENT INVESTMENT DECISION.

01:39PM 10 BUT THE FACT THAT THE TECHNOLOGY HERE CAN DO WHAT IT'S
01:39PM 11 BEEN DESIGNED TO DO ALL ALONG IS CERTAINLY SOMETHING THAT WAS
01:39PM 12 OF GREAT INTEREST TO US.

01:39PM 13 Q. AND IN THE NEXT SENTENCE THERE'S A REFERENCE TO "YOUR
01:39PM 14 PATIENTS."

01:39PM 15 DO YOU SEE THAT?

01:39PM 16 A. YES.

01:39PM 17 Q. AND DO YOU THINK THAT THAT MEANS THAT THAT SLIDE WAS THERE
01:39PM 18 FOR DOCTORS OR FOR SOME OTHER MEDICAL PROFESSIONALS? DID YOU
01:39PM 19 HAVE A THOUGHT ON THAT?

01:39PM 20 MR. CAZARES: OBJECTION. FOUNDATION. CALLS FOR
01:39PM 21 SPECULATION.

01:39PM 22 THE COURT: THE QUESTION WAS, DID HE HAVE A THOUGHT
01:39PM 23 ON THAT?

01:39PM 24 YES, YOU CAN ANSWER THAT QUESTION.

01:39PM 25 THE WITNESS: YOU KNOW, I DON'T KNOW WHEN I READ

01:39PM 1 THIS SLIDE IF I THOUGHT IT WAS DESIGNED TO BE ONLY MARKETED TO
01:39PM 2 DOCTORS.

01:39PM 3 I DO KNOW THAT I TRIED TO CONVINCE MY DOCTOR SEVERAL TIMES
01:39PM 4 THAT HE NEEDED TO REACH OUT TO THE COMPANY AND SEE IF HE COULD,
01:39PM 5 YOU KNOW, HAVE THEIR TESTING IN HIS OFFICE.

01:40PM 6 BY MR. SCHENK:

01:40PM 7 Q. I SEE.

01:40PM 8 A. BUT, YOU KNOW, WHEN IT TALKS ABOUT PATIENTS, I WOULD HAVE
01:40PM 9 ALSO ASSUMED THAT -- JUST AN INTEREST OF COMPLETENESS, I GUESS,
01:40PM 10 I WOULD HAVE ALSO ASSUMED -- WELL, I KNEW YOU HAD TO HAVE
01:40PM 11 DOCTOR'S ORDERS TO HAVE THESE TESTS DONE IN LOTS OF PLACES, SO
01:40PM 12 IT'S LIKELY THAT THESE ORDERS WOULD HAVE COME FROM DOCTORS.

01:40PM 13 Q. THANK YOU.

01:40PM 14 WOULD YOU NOW TURN TO SLIDE 10.

01:40PM 15 AT THE VERY BOTTOM, DO YOU SEE IT SAYS, "THERANOS WELLNESS
01:40PM 16 CENTERS WILL SOON BE LOCATED WITHIN WALGREENS STORES
01:40PM 17 NATIONWIDE"?

01:40PM 18 A. I DO.

01:40PM 19 Q. DID THAT REPRESENTATION HAVE SIGNIFICANCE TO YOU WHEN YOU
01:40PM 20 WERE MAKING A DECISION ABOUT WHETHER TO INVEST IN 2013?

01:41PM 21 A. IT DID.

01:41PM 22 YOU KNOW, MY CONVERSATIONS WITH MR. LUCAS KIND OF THROUGH
01:41PM 23 THOSE YEARS LEADING UP TO 2013 WAS THAT, YOU KNOW, THAT
01:41PM 24 THERANOS WAS AIMING TOWARDS A ROLLOUT, A COMMERCIALIZATION OF
01:41PM 25 THIS TECHNOLOGY THAT WOULD PUT IT, YOU KNOW, KIND OF READILY

01:41PM 1 AVAILABLE THROUGH THE COUNTRY.

01:41PM 2 I KNOW WE HAD HAD SOME DISCUSSIONS, HE AND I, ABOUT WHAT
01:41PM 3 THOSE LOCATIONS MAY BE.

01:41PM 4 AND SO, YOU KNOW, FOR IT TO BE IN, IN ALL OF THE WALGREENS
01:41PM 5 STORES THROUGH THE COUNTRY REPRESENTED KIND OF A VALIDATION OF
01:41PM 6 WHAT I HAD TALKED WITH HIM ABOUT, WHAT HE HAD REFLECTED TO US
01:41PM 7 FROM THE COMPANY, AND WHAT HIS CONVERSATIONS WITH THERANOS HAD
01:41PM 8 BEEN.

01:41PM 9 BUT ALSO IT REPRESENTED THAT, HEY, LOOK, HERE'S AN
01:41PM 10 OPPORTUNITY TO KIND OF HAVE THIS BE A NEW INDUSTRY, AND SO IT
01:42PM 11 CERTAINLY WOULD HAVE, IT WOULD HAVE GIVEN LOTS OF MOMENTUM TO
01:42PM 12 OUR INVESTMENT DISCUSSIONS.

01:42PM 13 Q. AND NOW DESCRIBE FOR ME HOW THIS COMPARED TO WHAT YOU
01:42PM 14 UNDERSTOOD WHEN YOU MADE THE 2006 INVESTMENT.

01:42PM 15 A. SO WHEN WE MADE THE 2006 INVESTMENT, YOU KNOW, THE USE
01:42PM 16 CASE FOR THERANOS AND ITS TECHNOLOGY WAS MOSTLY CENTERED AROUND
01:42PM 17 PHARMACEUTICAL OPPORTUNITIES ABOUT HELPING, YOU KNOW, MAKE DRUG
01:42PM 18 TRIALS MORE EFFICIENT AND, YOU KNOW, EVENTUALLY GETTING HERE.

01:42PM 19 BUT IT WAS FOCUSSED ON KIND OF A LIMITED THING.

01:42PM 20 AND SO THIS WOULD REPRESENT AN EVOLUTION, YOU KNOW, THAT
01:42PM 21 WOULD MAKE IT, THAT WOULD MAKE THE COMMERCIAL OPPORTUNITIES FOR
01:42PM 22 THAT TECHNOLOGY KIND OF WIDELY AVAILABLE.

01:42PM 23 AND ON THE INVESTMENT SIDE, IT WOULD HAVE MADE IT A VERY
01:42PM 24 PROFITABLE INVESTMENT.

01:42PM 25 Q. GREAT. IF YOU'LL NOW TURN TO PAGE 11, I THINK IT'S THE

01:43PM 1
01:43PM 2
01:43PM 3
01:43PM 4
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01:44PM 25

NEXT PAGE.

DO YOU SEE MORE CITATIONS TO MEDIA ABOUT THERANOS?

A. I DO.

Q. AND IN PARTICULAR THERE'S ONE THAT'S FOUR DOWN,
"ELIZABETH HOLMES: THE BREAKTHROUGH OF INSTANT DIAGNOSIS."
IT'S IN "THE WALL STREET JOURNAL" IT LOOKS LIKE
SEPTEMBER 7TH, 2013.

DO YOU SEE THAT?

A. I DO.

Q. AND DO YOU KNOW WHETHER YOU READ THAT ARTICLE?

A. I WOULD HAVE READ THAT ARTICLE.

Q. AND WHY DO YOU SAY THAT?

A. BECAUSE MY HABIT WAS TO READ EVERYTHING THAT I COULD FIND,
AND SO I'M SURE THAT I WOULD HAVE READ EACH ONE OF THOSE THINGS
REFERENCED HERE.

Q. AND YOU'VE DESCRIBED SOME OF THE THINGS THAT INFLUENCED
THE DECISION TO INVEST IN 2013.

WAS INFORMATION YOU READ IN THE PRESS ALSO ONE OF THE
THINGS THAT INFLUENCED YOUR DECISION TO INVEST IN 2013?

A. IT CERTAINLY WOULD HAVE BEEN AS TO THE VALIDATED THINGS
THAT I WAS ALREADY HEARING OR THINKING FROM OTHER SOURCES.

Q. THANK YOU.

SO THIS EXHIBIT 4030 WAS ATTACHED TO AN EMAIL THAT WAS
SENT IN NOVEMBER, NOVEMBER 8TH, 2013.

DO YOU SEE THAT?

01:44PM 1 A. CORRECT.

01:44PM 2 Q. THE NEXT MONTH, IN DECEMBER OF 2013, DID YOU PARTICIPATE

01:44PM 3 IN A CALL WITH ELIZABETH HOLMES?

01:44PM 4 A. I DID.

01:44PM 5 Q. LET'S TALK ABOUT THE LEAD UP TO THAT. IF YOU'LL TURN TO

01:44PM 6 EXHIBIT 1346.

01:44PM 7 IS EXHIBIT -- ARE YOU THERE, SIR?

01:44PM 8 A. I AM.

01:44PM 9 Q. IS EXHIBIT 1346 AN EMAIL FROM MS. QUINTANA TO OTHERS,

01:44PM 10 INCLUDING YOU, ANNOUNCING THAT CALL THAT WE JUST DISCUSSED?

01:44PM 11 A. IT IS.

01:44PM 12 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 1346.

01:44PM 13 MR. CAZARES: NO OBJECTION.

01:45PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:45PM 15 (GOVERNMENT'S EXHIBIT 1346 WAS RECEIVED IN EVIDENCE.)

01:45PM 16 BY MR. SCHENK:

01:45PM 17 Q. SIR, THIS AGAIN REFERENCES BLACK DIAMOND VENTURES. THAT'S

01:45PM 18 THE GROUP THAT YOU INVESTED THE 2006 INVESTMENT THROUGH; IS

01:45PM 19 THAT RIGHT?

01:45PM 20 A. CORRECT.

01:45PM 21 Q. AND IT READS, "AN INVESTOR CONFERENCE CALL HAS BEEN

01:45PM 22 SCHEDULED FOR THIS FRIDAY, DECEMBER 20TH, PROMPTLY STARTING AT

01:45PM 23 10:15 A.M. PACIFIC. THE CONFIDENTIAL UPDATE WILL BE PRESENTED

01:45PM 24 BY THERANOS'S CEO ELIZABETH HOLMES."

01:45PM 25 DO YOU SEE THAT?

01:45PM 1 A. I DO.

01:45PM 2 Q. AND WAS THERE A CALL ON DECEMBER 20TH OF 2013?

01:45PM 3 A. THERE WAS.

01:45PM 4 Q. AND DID YOU PARTICIPATE IN THAT CALL?

01:45PM 5 A. I DID.

01:45PM 6 Q. YOU'VE MENTIONED ANOTHER INDIVIDUAL NAMED CRAIG HALL,

01:45PM 7 MR. HALL.

01:45PM 8 DO YOU KNOW IF HE ALSO PARTICIPATED?

01:45PM 9 A. HE DID.

01:45PM 10 Q. THE NEXT PARAGRAPH READS, "WITH THEIR LAUNCH TO CONSUMER

01:45PM 11 HEALTH CARE THIS YEAR, THEY ARE RAPIDLY SCALING TO ESTABLISH A

01:45PM 12 NATIONAL FOOTPRINT AND CAPTURE THE OPPORTUNITY WE HAVE TO SERVE

01:46PM 13 AS THE ONLY CERTIFIED, NATIONAL LABORATORY CAPABLE OF RUNNING

01:46PM 14 ANY OF ITS LABORATORY TESTS FROM A FEW TINY DROPLETS OF BLOOD."

01:46PM 15 THAT MAKES SOME REPRESENTATIONS ABOUT THE THERANOS

01:46PM 16 TECHNOLOGY.

01:46PM 17 I'M WONDERING IF THAT WAS CONSISTENT WITH YOUR

01:46PM 18 UNDERSTANDING OF THE THERANOS TECHNOLOGY WHEN YOU MADE THE 2013

01:46PM 19 INVESTMENT DECISION.

01:46PM 20 A. IT IS. I MEAN, IT'S -- YOU KNOW, I BELIEVE IN

01:46PM 21 SEPTEMBER -- SO THIS IS IN DECEMBER.

01:46PM 22 IN SEPTEMBER THEY HAD -- THERANOS HAD RELEASED THE PRESS

01:46PM 23 RELEASE ABOUT THE PARTNERSHIP WITH WALGREENS, AND SO THIS, YOU

01:46PM 24 KNOW, CERTAINLY KIND OF PULLED ALL OF THAT TOGETHER AND SAID,

01:46PM 25 LOOK, IT'S A REAL THING AND IT'S AN OPPORTUNITY TO ROLL IT OUT

01:46PM 1 IN A BIG WAY.

01:46PM 2 Q. THANK YOU.

01:46PM 3 THE NEXT PARAGRAPH READS, "AS PART OF THIS INITIATIVE,
01:46PM 4 THEY ARE COMPLETING A SERIES OF FINANCIAL TRANSACTIONS WITH
01:47PM 5 STRATEGIC PARTNERS THAT PROVIDE ACCESS TO ADDITIONAL CAPITAL IN
01:47PM 6 ORDER TO ACCELERATE THEIR GROWTH."

01:47PM 7 AND THEN I THINK A SENTENCE LATER IT READS, "THE PRICE PER
01:47PM 8 SHARE OF THERANOS SERIES C-1 PREFERRED STOCK IN THE
01:47PM 9 TRANSACTIONS CLOSING BETWEEN NOW AND DECEMBER 31ST, 2013, IS
01:47PM 10 \$75/PER SHARE (PRE-SPLIT)."

01:47PM 11 SO I WANT TO ASK YOU SOME QUESTIONS ABOUT THAT.

01:47PM 12 FIRST, WERE YOU INVESTORS BEFORE THIS C ROUND?

01:47PM 13 A. YOU KNOW, SO I THINK OUR INVESTMENT IN 2006 WAS IN THE
01:47PM 14 SERIES C.

01:47PM 15 Q. IT WAS --

01:47PM 16 A. AND THIS WAS AN ADDITIONAL -- THIS WAS AN ADDITIONAL
01:47PM 17 SERIES C-1.

01:47PM 18 Q. I SEE. SO THERE WAS A C, AND THEN A C-1?

01:47PM 19 A. I BELIEVE THAT'S CORRECT.

01:48PM 20 Q. DO YOU REMEMBER WHAT THE SHARE PRICE WAS IN 2006?

01:48PM 21 A. SO OUR INVESTMENT IN 2006 WAS A LITTLE LESS THAN \$3 A
01:48PM 22 SHARE. I THINK IT WAS LIKE 2.82 OR 2.83 A SHARE.

01:48PM 23 Q. AND THE PRICE FOR C-1 STOCK WAS \$75 PER SHARE ACCORDING TO
01:48PM 24 THIS?

01:48PM 25 A. CORRECT.

01:48PM 1 Q. HOW ABOUT THAT FACT, LESS THAN \$3, NOW \$75. HOW DID THAT
01:48PM 2 INFLUENCE, IF IT DID, YOUR THINKING ABOUT THE INVESTMENT OR
01:48PM 3 ABOUT THERANOS GENERALLY FROM 2006 UNTIL THIS TIME?

01:48PM 4 A. SURE. IT FELT LIKE WE HAD HIT A HOME RUN, RIGHT? THAT
01:48PM 5 THE TECHNOLOGY HAD BEEN DEVELOPED AND HAD DONE EVERYTHING THAT
01:48PM 6 WE HAD THOUGHT WHEN WE FIRST INVESTED, AND THAT NOW IT WAS AT A
01:48PM 7 PLACE TO KIND OF HAVE A WIDE ROLLOUT AND BE COMMERCIALIZED.

01:48PM 8 IT FELT LIKE THERE WERE LOTS OF PEOPLE WHO WERE INVESTING
01:49PM 9 AT \$75 A SHARE IN 2013 WHO WOULD NOT BE INVESTING TO JUST HAVE
01:49PM 10 THAT INVESTMENT STAY AT THE PLACE THAT THEY HAD INVESTED.

01:49PM 11 SO IT REALLY FELT LIKE, YOU KNOW, EVERYTHING WAS GOING
01:49PM 12 WELL AND THAT \$75 A SHARE WAS A VALIDATION OF WHY WE SHOULD
01:49PM 13 INVEST MORE.

01:49PM 14 Q. AND IT ALSO TALKS ABOUT CLOSING BETWEEN NOW -- THE DATE OF
01:49PM 15 THE EMAIL IS DECEMBER 18TH -- AND DECEMBER 31ST, 2013.

01:49PM 16 DID YOU HAVE ANY THOUGHTS ABOUT THE AMOUNT OF TIME THAT
01:49PM 17 YOU HAD TO MAKE A DECISION?

01:49PM 18 A. YEAH. WE HAD HAD SEVERAL CONVERSATIONS WITH MR. LUCAS
01:49PM 19 ABOUT A FOLLOW-ON INVESTMENT AND, YOU KNOW, AT SOME POINT
01:49PM 20 WANTED TO BE DIRECT WITH THE COMPANY.

01:49PM 21 CHRIS HAD INDICATED -- MR. LUCAS HAD INDICATED THAT, THAT
01:50PM 22 KIND OF THE OFFER TO INVEST ADDITIONAL FUNDS WAS GOOD THROUGH
01:50PM 23 DECEMBER 31ST, AND THAT AFTER THAT THERE WERE A FEW PEOPLE FOR
01:50PM 24 CONTRACTUAL REASONS, I THINK, WHO HAD TO INVEST A LITTLE LATER,
01:50PM 25 BUT THAT IT WOULD BE AT A HIGHER VALUATION, AND THAT, YOU KNOW,

01:50PM 1 OUR OPPORTUNITY TO INVEST MORE WOULD, WOULD KIND OF EXPIRE ON
01:50PM 2 DECEMBER 31ST.

01:50PM 3 Q. SO YOU HAD A FEW WEEKS OR SO TO MAKE A DECISION ABOUT
01:50PM 4 INVESTING IN 2013?

01:50PM 5 A. YEAH, THAT'S CORRECT.

01:50PM 6 Q. I'D LIKE TO NOW TALK TO YOU ABOUT THE CALL ON
01:50PM 7 DECEMBER 20TH.

01:50PM 8 WHERE WERE YOU WHEN YOU PARTICIPATED IN THE CALL?

01:50PM 9 A. I WAS IN FRISCO, TEXAS.

01:50PM 10 Q. AND DO YOU KNOW WHERE MR. HALL WAS?

01:50PM 11 A. YOU KNOW, I DIDN'T ON THAT DAY, BUT NOW I DO. I BELIEVE
01:50PM 12 HE WAS IN CALIFORNIA, OR HE WAS TRAVELLING SOMEWHERE.

01:50PM 13 Q. OKAY. HE WASN'T WITH YOU IN TEXAS?

01:50PM 14 A. HE WASN'T WITH ME IN TEXAS.

01:50PM 15 Q. DO YOU REMEMBER ABOUT HOW LONG THE CALL WAS?

01:51PM 16 A. I THINK IT WAS PROBABLY ABOUT AN HOUR, MAYBE A LITTLE
01:51PM 17 LONGER.

01:51PM 18 Q. DID MS. HOLMES SPEAK?

01:51PM 19 A. SHE DID.

01:51PM 20 Q. DO YOU KNOW IF ANY OTHER EMPLOYEES FROM THERANOS SPOKE?

01:51PM 21 A. NOT THAT I RECALL. I ONLY RECALL HER.

01:51PM 22 Q. I'D LIKE TO TALK TO YOU ABOUT A FEW DIFFERENT CATEGORIES
01:51PM 23 OF INFORMATION AND SEE IF, IF MS. HOLMES TALKED ABOUT THESE
01:51PM 24 CATEGORIES.

01:51PM 25 DO YOU HAVE A RECOLLECTION OF THE CALL?

01:51PM 1 A. I DO.

01:51PM 2 Q. THE FIRST I'D LIKE TO TALK TO YOU ABOUT IS THE THERANOS
01:51PM 3 BLOOD TESTING TECHNOLOGY GENERALLY.

01:51PM 4 DURING THE CALL, DID MS. HOLMES TALK TO YOU ABOUT THE
01:51PM 5 THERANOS BLOOD TESTING TECHNOLOGY?

01:51PM 6 A. SHE DID.

01:51PM 7 Q. AND WHAT DO YOU REMEMBER HER SAYING?

01:51PM 8 A. YOU KNOW, AS I REMEMBER THAT CALL, I REMEMBER HER SAYING,
01:51PM 9 YOU KNOW, THAT THE TECHNOLOGY WAS DEVELOPED TO A POINT WHERE
01:51PM 10 THERE COULD BE LOTS AND LOTS OF TESTS THAT WOULD BE RUN ON A
01:51PM 11 SMALL DROP OF BLOOD, AND THAT IT WAS ABLE TO BE, YOU KNOW, KIND
01:52PM 12 OF DONE FROM ANY LOCATION SO THAT, YOU KNOW, THERE WASN'T A BIG
01:52PM 13 CENTRAL LAB THAT THOSE TESTS HAD TO BE FILTERED THROUGH.

01:52PM 14 AND I REMEMBER HER SAYING THAT -- I BELIEVE THAT THE
01:52PM 15 ECONOMICS OF THOSE TESTS WERE SUCH THAT IT MADE IT VERY COST
01:52PM 16 EFFICIENT FOR THE COMPANY TO DO THAT, AS OPPOSED TO SOME OTHER
01:52PM 17 COMPETITORS AND WHAT THEY WOULD CHARGE.

01:52PM 18 Q. THANK YOU.

01:52PM 19 DO YOU REMEMBER WHETHER MS. HOLMES TALKED ABOUT THE KIND
01:52PM 20 OF TUBES OF BLOOD THAT THERANOS USED VERSUS WHAT TRADITIONAL
01:52PM 21 LAB TESTING INVOLVED?

01:52PM 22 A. YOU KNOW, I WOULD HAVE TO LOOK BACK AT THE TRANSCRIPT OF
01:52PM 23 THE CALL, BUT I THINK THERE WAS SOME DISCUSSION ABOUT THE, YOU
01:52PM 24 KNOW, ABOUT THE SMALL NANOTAINERS OR CONTAINERS OF BLOOD THAT
01:52PM 25 WOULD TAKE JUST A FEW DROPS.

01:53PM 1 Q. YOU REFERENCED A TRANSCRIPT OF THE CALL.

01:53PM 2 WHAT DO YOU MEAN?

01:53PM 3 A. WELL, AT SOME POINT THAT PHONE CALL WAS RECORDED AND THERE
01:53PM 4 WAS A TRANSCRIPTION MADE OF IT.

01:53PM 5 Q. I SEE.

01:53PM 6 A. AND SO, YOU KNOW, I'VE -- SO I KNOW THERE'S A TRANSCRIPT
01:53PM 7 OF THAT CALL, AND I JUST HAVEN'T REVIEWED IT.

01:53PM 8 Q. AND AS YOU'RE TESTIFYING TODAY, IS SOME OF YOUR MEMORY
01:53PM 9 BASED UPON HAVING REVIEWED THAT TRANSCRIPT AT SOME POINT SINCE
01:53PM 10 2013?

01:53PM 11 A. CERTAINLY.

01:53PM 12 WHEN I SAY I HAVEN'T REVIEWED THE TRANSCRIPT, I HAVEN'T
01:53PM 13 REVIEWED IT ENOUGH TO MEMORIZE IT AND KNOW EXACTLY -- RECALL
01:53PM 14 EXACTLY WHAT WAS SAID.

01:53PM 15 Q. I SEE. BUT WHEN YOU'RE TESTIFYING TODAY ABOUT THE CALL,
01:53PM 16 YOU'RE SAYING THAT SOME OF THAT IS BASED ON HAVING REVIEWED THE
01:53PM 17 TRANSCRIPT SINCE THE CALL?

01:53PM 18 A. CORRECT.

01:53PM 19 Q. OKAY. HOW ABOUT THE TOPIC OF THERANOS'S WORK WITH THE
01:53PM 20 MILITARY? DID MS. HOLMES TALK ABOUT THAT?

01:53PM 21 A. SHE DID TALK ABOUT MILITARY APPLICATIONS AND ABOUT, YOU
01:54PM 22 KNOW, THAT THERANOS DEVICES WERE EMPLOYED ON THE MEDEVAC
01:54PM 23 HELICOPTERS AND BEING USED TO KIND OF IMPROVE SURVIVAL RATES OF
01:54PM 24 MILITARY PERSONNEL WHO HAD BEEN INJURED IN COMBAT.

01:54PM 25 Q. OKAY. WE'LL COME BACK TO THAT IN A MOMENT.

01:54PM 1 DID MS. HOLMES TALK ABOUT FINANCIALS, THE FINANCIAL HEALTH
01:54PM 2 OF THERANOS OR HOW IT WAS SPENDING THE MONEY THAT IT WAS
01:54PM 3 MAKING?

01:54PM 4 A. I BELIEVE THERE WAS SOME DISCUSSION ABOUT FINANCIAL KIND
01:54PM 5 OF MATTERS.

01:54PM 6 Q. AND WHAT DO YOU RECALL ABOUT THAT?

01:54PM 7 A. I JUST RECALL THAT THERE WAS SOME GENERAL MENTION, YOU
01:54PM 8 KNOW, SOMETHING ABOUT KIND OF THE PRICING OF WHAT THOSE TESTS
01:54PM 9 WERE AND KIND OF THE USE OF THE FUNDS THAT WERE BEING RAISED
01:54PM 10 AND HOW THOSE WOULD FACTOR INTO THE FINANCIAL HEALTH OF THE
01:54PM 11 COMPANY.

01:54PM 12 Q. AND WHAT ABOUT THE RETAIL LAUNCH? DO YOU REMEMBER
01:54PM 13 MS. HOLMES SAYING ANYTHING ABOUT THE RETAIL LAUNCH?

01:54PM 14 A. SO THERE WAS SOME DISCUSSION ABOUT THE RETAIL LAUNCH AND
01:55PM 15 ABOUT, YOU KNOW, THE TECHNOLOGY BEING READY TO BE ROLLED OUT TO
01:55PM 16 THE WALGREENS LOCATIONS AND HOW THAT WOULD BE OF BENEFIT TO THE
01:55PM 17 COMPANY.

01:55PM 18 Q. SO LET'S TAKE EACH OF THOSE THEN.

01:55PM 19 THE STATEMENTS THAT YOU HEARD ABOUT THE THERANOS
01:55PM 20 TECHNOLOGY, I THINK YOU SAID LOTS AND LOTS OF TESTS FROM SMALL
01:55PM 21 SAMPLES.

01:55PM 22 DID THAT MATTER WHEN YOU WERE MAKING A DECISION TO INVEST
01:55PM 23 IN THERANOS IN 2013?

01:55PM 24 A. IT DID.

01:55PM 25 YOU KNOW, CERTAINLY OUR, YOU KNOW, OUR UNDERSTANDING OF

01:55PM 1 WHAT THE TECHNOLOGY COULD DO IS THAT -- YOU KNOW, EVEN AS I
01:55PM 2 REMEMBER, THERE WAS A LISTING POSTED ON THE WEBSITE AT SOME
01:55PM 3 POINT ON ALL OF THE TESTS THAT COULD BE DONE AND THE PRICES
01:55PM 4 THAT WOULD BE CHARGED FOR THOSE.

01:55PM 5 SO OUR UNDERSTANDING WAS THAT WITH THIS MULTITUDE OF
01:55PM 6 TESTS, YOU KNOW, ANYBODY COULD REALLY GO GET A TEST AND HAVE
01:55PM 7 SOME VALUE OR BENEFIT FROM THAT, AND SO I THINK THERE WAS SOME
01:56PM 8 REFERENCE TO THAT ON THE CALL.

01:56PM 9 Q. AND HOW DID THAT COMPARE TO YOUR UNDERSTANDING IN 2006?

01:56PM 10 A. WHEN WE INVESTED IN 2006, THERE WAS A LIMITED AMOUNT OF
01:56PM 11 TESTS THAT COULD BE DONE. WE KNEW THAT, YOU KNOW, THERE WERE
01:56PM 12 SOME CAPABILITIES, BUT THAT OVER TIME THAT THAT WOULD INCREASE.

01:56PM 13 AND SO IT FELT LIKE, YOU KNOW, AT THIS POINT THE
01:56PM 14 TECHNOLOGY HAD PROGRESSED TO A PLACE THAT THOSE TESTS REALLY
01:56PM 15 COULD BE DONE.

01:56PM 16 Q. AND HOW ABOUT THE STATEMENTS THAT YOU DESCRIBED WITH
01:56PM 17 REGARD TO THE MILITARY WORK? DID THOSE STATEMENTS MATTER IN
01:56PM 18 YOUR DECISION TO INVEST?

01:56PM 19 A. THEY DID. YOU KNOW, WE HAD WATCHED WITH GREAT INTEREST --
01:56PM 20 HER BOARD OF DIRECTORS WAS UNVEILED IN JULY, AND WE HAD SEEN,
01:56PM 21 YOU KNOW, KIND OF THE MEMBERS OF THAT BOARD, AND IN
01:56PM 22 CONVERSATIONS THAT I HAD HAD WITH CHRIS LUCAS OVER THAT YEAR,
01:57PM 23 YOU KNOW, THERE WAS REFERENCE TO GOVERNMENTAL CONTRACTS AND,
01:57PM 24 YOU KNOW, KIND OF SEEING THE MEMBERS OF HER BOARD OF DIRECTORS
01:57PM 25 WHO WERE PARTICIPATING IN HELPING THOSE GOVERNMENT CONTRACTS

01:57PM 1 ALONG THE WAY.

01:57PM 2 IT CERTAINLY FELT LIKE THAT REPRESENTED A GREAT
01:57PM 3 OPPORTUNITY FOR THE COMPANY AND ONE THAT WE WERE INTERESTED IN.

01:57PM 4 Q. WAS THERE MENTION OF MILITARY WORK IN 2006?

01:57PM 5 A. THERE WAS NOT.

01:57PM 6 Q. SO HOW DOES THIS, THIS CONCEPT OR THIS AREA OF WORK
01:57PM 7 COMPARE WITH YOUR UNDERSTANDING OF WHAT THERANOS WAS DOING IN
01:57PM 8 2006?

01:57PM 9 A. SO IT REPRESENTED A BROADENING OF THEIR BUSINESS
01:57PM 10 OPPORTUNITIES, ONE THAT WAS EXCITING, NOTWITHSTANDING THE FACT
01:57PM 11 THAT IT WAS HELPING PEOPLE THAT WERE INJURED, AND THAT'S NEVER
01:57PM 12 AN EXCITING THING.

01:57PM 13 BUT, YOU KNOW, I THINK IN A PERSONAL WAY, IT RESONATED. I
01:57PM 14 HAVE A BROTHER WHO WAS IN THE MARINES AND WHO WAS IN
01:57PM 15 AFGHANISTAN FOR A PERIOD OF TIME, SO, YOU KNOW, THE THOUGHT
01:58PM 16 THAT THESE SERVICE MEN AND WOMEN WHO GET HURT CAN BE HELPED WAS
01:58PM 17 CERTAINLY SOMETHING THAT WE FELT, YOU KNOW, WHOLEHEARTED
01:58PM 18 SUPPORT FOR.

01:58PM 19 Q. HOW ABOUT THE STATEMENTS THAT YOU HEARD ABOUT THE
01:58PM 20 FINANCIAL STATE OF THERANOS? DID THOSE STATEMENTS MATTER IN
01:58PM 21 YOUR DECISION TO INVEST?

01:58PM 22 A. THEY DID.

01:58PM 23 YOU KNOW, OUR UNDERSTANDING HAD BEEN ALONG THE WAY THAT
01:58PM 24 THERANOS WAS ABLE TO CAPTURE, YOU KNOW, SUBSTANTIAL REVENUE
01:58PM 25 FROM PHARMACEUTICAL CONTRACTS AND FROM OTHER SOURCES AND THAT,

01:58PM 1 YOU KNOW, AT SOME POINT HAD BEEN ABLE TO BE CASH FLOW POSITIVE
01:58PM 2 OR SUSTAIN ITSELF FROM KIND OF REVENUES FROM OPERATIONS.

01:58PM 3 SO TO HEAR HER TALK ABOUT FINANCIAL KINDS OF THINGS IN A
01:58PM 4 POSITIVE WAY WAS, WAS EXTREMELY HELPFUL.

01:58PM 5 Q. AND HOW DID THAT COMPARE TO YOUR UNDERSTANDING IN 2006?

01:58PM 6 A. IN 2006, YOU KNOW, WHEN WE MADE THE INVESTMENT, OUR
01:58PM 7 UNDERSTANDING WAS THAT THERE WERE LOTS OF THOSE PHARMACEUTICAL
01:59PM 8 CONTRACTS IN PLACE, AND THEN THERE WAS CONTRACTS THAT WERE IN
01:59PM 9 PLACE AT THE TIME THAT WE INVESTED THAT HAD BEEN SIGNED WOULD,
01:59PM 10 YOU KNOW, BE A SUBSTANTIAL SOURCE OF REVENUE.

01:59PM 11 SO, YOU KNOW, THE OPPORTUNITY IN 2013 FELT A LOT BIGGER
01:59PM 12 THAN IT DID IN 2006, LIKE IT HAD MATURED AND THE COMPANY WAS
01:59PM 13 GOING TO BE ABLE TO ADDRESS IT.

01:59PM 14 Q. THANK YOU.

01:59PM 15 AND FINALLY, THE STATEMENTS THAT MS. HOLMES MADE ABOUT THE
01:59PM 16 WALGREENS ROLLOUT, DID THOSE HAVE SIGNIFICANCE IN YOUR DECISION
01:59PM 17 TO INVEST?

01:59PM 18 A. THEY DID.

01:59PM 19 LIKE I HAD REFERENCED BEFORE, YOU KNOW, MR. LUCAS AND I
01:59PM 20 HAD CONVERSATIONS ABOUT A RETAIL ROLLOUT AND ABOUT THE
01:59PM 21 COMPANY'S, YOU KNOW, FOCUS ON DEVELOPING THESE KIND OF LOCAL
01:59PM 22 PLACES WHERE THE TESTS COULD BE ADMINISTERED.

01:59PM 23 WE HAD HAD CONVERSATIONS ABOUT SAFEWAY, ABOUT WAL-MART,
01:59PM 24 ABOUT WALGREENS, AND SO THE FACT THAT ONE OF THOSE HAD ACTUALLY
02:00PM 25 MATURED TO A PLACE WHERE THE TECHNOLOGY WAS EMBRACED AND

02:00PM 1 ADOPTED, YOU KNOW, CERTAINLY WAS SOMETHING THAT WAS PIVOTAL TO
02:00PM 2 OUR INVESTMENT.

02:00PM 3 Q. YOU'VE DESCRIBED TO THE JURY THE RISKS THAT YOU SAW IN THE
02:00PM 4 2006 INVESTMENT.

02:00PM 5 DID YOUR VIEW OF THE RISKS OF A 2013 INVESTMENT, DID THEY
02:00PM 6 CHANGE?

02:00PM 7 A. THEY DID. IT FELT LIKE IN 2013 THE RISK WAS REALLY, YOU
02:00PM 8 KNOW, COULD THEY, COULD THEY ACTUALLY DO WHAT THEY NEEDED TO DO
02:00PM 9 BY WAY OF ROLLING THIS OUT?

02:00PM 10 IT WASN'T WHETHER THE TECHNOLOGY WORKED. IT WASN'T
02:00PM 11 WHETHER THERE WAS A MARKET FOR IT.

02:00PM 12 IT WAS WHETHER THEY COULD, YOU KNOW, FINANCIALLY ROLL IT
02:00PM 13 OUT AND NOT HAVE A COMPETITIVE RESPONSE THAT WOULD, YOU KNOW,
02:00PM 14 BE ADVERSE TO THEM.

02:00PM 15 Q. AFTER THE CALL, DID YOU, IN FACT, MAKE A DECISION TO
02:00PM 16 INVEST IN THERANOS?

02:00PM 17 A. WE DID.

02:00PM 18 Q. DESCRIBE THAT PROCESS, THE DECISION PROCESS.

02:00PM 19 A. WELL, SO WE, WE HAD THIS CALL ON DECEMBER 20TH, AS I
02:01PM 20 UNDERSTAND.

02:01PM 21 YOU KNOW, MR. HALL HAD AN ADDITIONAL FURTHER CONVERSATION
02:01PM 22 WITH ELIZABETH.

02:01PM 23 A FEW DAYS LATER WE CONTINUED TO HAVE SOME DISCUSSIONS
02:01PM 24 WITH CHRIS LUCAS ABOUT THAT INVESTMENT AND WHETHER WE WOULD BE
02:01PM 25 ABLE TO INVEST IN THE COMPANY DIRECTLY.

02:01PM 1 AND ONCE THAT WAS SETTLED, WE, WE DECIDED TO INVEST AN
02:01PM 2 ADDITIONAL \$5 MILLION, AND WE SENT THAT IN ON DECEMBER 31ST
02:01PM 3 TRYING TO GET IT IN BEFORE THE DEADLINE.

02:01PM 4 Q. LET'S TALK ABOUT THAT PROCESS. FIRST, YOU SAID YOU SENT
02:01PM 5 IT IN ON DECEMBER 31ST; IS THAT RIGHT?

02:01PM 6 A. I BELIEVE THAT'S RIGHT.

02:01PM 7 Q. WOULD YOU TURN IN YOUR BINDER TO TAB 5811.

02:02PM 8 I WANT TO ASK YOU QUESTIONS ABOUT THE TOP THREE EMAILS IN
02:02PM 9 THIS DOCUMENT.

02:02PM 10 DO YOU SEE THOSE?

02:02PM 11 A. I DO.

02:02PM 12 Q. SO THE FURTHEST ONE DOWN FROM THERANOS TO ANA, IS THAT
02:02PM 13 ANA QUINTANA AT BLACK DIAMOND VENTURES?

02:02PM 14 A. THAT WOULD BE.

02:02PM 15 Q. AND THEN ABOVE THAT IS ALSO MS. QUINTANA TO THERANOS.

02:02PM 16 DO YOU SEE THAT?

02:02PM 17 A. I DO.

02:02PM 18 Q. AND THE FINALLY THE ONE ABOVE THAT IS AN EMAIL FROM
02:02PM 19 MR. BALWANI TO MS. HOLMES.

02:02PM 20 DO YOU SEE THAT?

02:02PM 21 A. I DO SEE THAT.

02:02PM 22 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 5811
02:02PM 23 FOR NOTICE PURPOSES.

02:02PM 24 THE COURT: ALL OF THE THREE PAGES?

02:02PM 25 MR. SCHENK: NO, JUST THOSE THREE EMAILS, THE TOP

02:02PM 1 THREE EMAILS ON THE FIRST PAGE.

02:02PM 2 THE COURT: SO NOT FOR THE TRUTH OF THE MATTER

02:02PM 3 ASSERTED, BUT SOLELY FOR NOTICE AS TO MR. BALWANI?

02:02PM 4 MR. SCHENK: YES, SIR.

02:02PM 5 THE COURT: COUNSEL?

02:03PM 6 MR. CAZARES: NO OBJECTION.

02:03PM 7 THE COURT: LADIES AND GENTLEMEN, THIS WILL BE

02:03PM 8 ADMITTED NOT FOR THE TRUTH OF THE MATTER ASSERTED, BUT SOLELY

02:03PM 9 FOR THE ISSUE AS TO NOTICE TO MR. BALWANI AS TO THE ISSUES

02:03PM 10 CONTAINED IN THESE EMAILS.

02:03PM 11 THERE'S THREE?

02:03PM 12 MR. SCHENK: YES, YOUR HONOR.

02:03PM 13 THE COURT: ALL RIGHT. THEY MAY BE PUBLISHED.

02:03PM 14 (GOVERNMENT'S EXHIBIT 5811, TOP THREE EMAILS ON FIRST

02:03PM 15 PAGE, WAS RECEIVED IN EVIDENCE.)

02:03PM 16 BY MR. SCHENK:

02:03PM 17 Q. MR. TOLBERT, DO YOU SEE ON THE SCREEN THOSE TOP THREE

02:03PM 18 EMAILS?

02:03PM 19 A. I DO.

02:03PM 20 Q. AND IF WE START WITH THE ONE ON THE VERY BOTTOM, IT'S FROM

02:03PM 21 AN EMAIL ACCOUNT THAT IS TITLED SHAREHOLDERINFO@THERANOS.COM.

02:03PM 22 DO YOU SEE THAT?

02:03PM 23 A. YES.

02:03PM 24 Q. AND THAT WAS SENT TO ANA@BDVENTURES.

02:03PM 25 WHO, AGAIN, IS SHE?

02:03PM 1 A. SO ANA IS AN EMPLOYEE WITH CHRIS LUCAS AT BLACK DIAMOND
02:03PM 2 VENTURES, AND SHE WAS, YOU KNOW, ONE OF THE PRINCIPALS IN THAT
02:03PM 3 ENTERPRISE.

02:03PM 4 Q. THANK YOU.

02:03PM 5 SO IF WE GO UP ONE EMAIL, MS. QUINTANA WRITES -- DO YOU
02:04PM 6 SEE THE PARAGRAPH THAT BEGINS "ADDITIONALLY"?

02:04PM 7 A. I DO.

02:04PM 8 Q. "PER CHRIS LUCAS'S CONVERSATION WITH ELIZABETH OVER THE
02:04PM 9 WEEKEND, CRAIG HALL WHO INITIALLY INVESTED THROUGH BLACK
02:04PM 10 DIAMOND VENTURES WILL NOW BE INVESTING DIRECTLY."

02:04PM 11 DO YOU SEE THAT?

02:04PM 12 A. I DO.

02:04PM 13 Q. AND WAS THAT, IN FACT, TRUE? WAS THE INVESTMENT THAT THE
02:04PM 14 HALL GROUP, CRAIG HALL, MADE NOW DIRECTLY INTO THERANOS?

02:04PM 15 A. IT WAS. IT WAS.

02:04PM 16 Q. IF WE LOOK AT THE DATE OF THIS EMAIL, IT'S DECEMBER 30TH.
02:04PM 17 WAS THAT THE DAY BEFORE THE WIRE TRANSFER THAT YOU TALKED
02:04PM 18 ABOUT A MOMENT AGO?

02:04PM 19 A. THAT'S CORRECT.

02:04PM 20 Q. NOW, IF WE LOOK AT THE VERY TOP EMAIL, DO YOU SEE
02:04PM 21 MR. BALWANI RECEIVING THIS EMAIL FROM -- I'M SORRY, MR. BALWANI
02:04PM 22 SENDING THIS EMAIL TO MS. HOLMES?

02:04PM 23 A. I DO.

02:04PM 24 Q. AND THE TEXT IS, "WANT TO MAKE SURE YOU SAW THIS."
02:04PM 25 IS THAT RIGHT?

02:05PM 1 A. CORRECT.

02:05PM 2 Q. AND NOW IF YOU COULD TURN TO 3530 IN YOUR BINDER.

02:05PM 3 IF YOU'LL LOOK AT PAGES 1 THROUGH 24 AND PAGE 32.

02:05PM 4 I'M GOING TO ASK IF YOU RECOGNIZE THOSE PAGES.

02:05PM 5 A. I DO.

02:05PM 6 Q. WHAT ARE THEY?

02:05PM 7 A. SO THIS IS THE STOCK PURCHASE AGREEMENT THAT KIND OF

02:05PM 8 GOVERNED OUR INVESTMENT IN 2013.

02:05PM 9 Q. INTO THERANOS?

02:05PM 10 A. CORRECT.

02:05PM 11 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 3530,

02:05PM 12 PAGES 1 THROUGH 24 AND PAGE 32.

02:05PM 13 MR. CAZARES: NO OBJECTION.

02:05PM 14 THE COURT: THOSE PAGES ARE ADMITTED, AND THEY MAY

02:05PM 15 BE PUBLISHED.

02:05PM 16 MR. SCHENK: THANK YOU.

02:05PM 17 (GOVERNMENT'S EXHIBIT 3530, PAGES 1-24 AND 32, WAS

02:05PM 18 RECEIVED IN EVIDENCE.)

02:05PM 19 BY MR. SCHENK:

02:05PM 20 Q. YOU SAID THAT THIS IS THE PURCHASE AGREEMENT FOR THE STOCK

02:06PM 21 IN 2013; IS THAT RIGHT?

02:06PM 22 A. CORRECT.

02:06PM 23 Q. I'M GOING TO ASK YOU SOME QUESTIONS ABOUT A FEW PAGES.

02:06PM 24 WOULD YOU PLEASE TURN FIRST TO PAGE 11.

02:06PM 25 AT THE VERY BOTTOM THERE'S A SECTION 4.4, SPECULATIVE

02:06PM 1 NATURE OF INVESTMENT.

02:06PM 2 DO YOU SEE THAT?

02:06PM 3 A. I DO.

02:06PM 4 Q. AND IT CARRIES OVER TO THE NEXT PAGE.

02:06PM 5 DID ULTIMATELY YOU SIGN THIS AGREEMENT?

02:06PM 6 A. I DID.

02:06PM 7 Q. AND WHEN YOU SIGNED IT, WERE YOU ACKNOWLEDGING THAT YOU
02:06PM 8 UNDERSTOOD THAT THE INVESTMENT WAS SPECULATIVE?

02:06PM 9 A. I DID.

02:06PM 10 Q. AND WHAT DID THAT MEAN TO YOU?

02:06PM 11 A. YOU KNOW, WITH ANY INVESTMENT THERE IS RISK, AND SO, YOU
02:06PM 12 KNOW, THERE'S ALWAYS THE OPPORTUNITY FOR THOSE RISKS TO BE KIND
02:06PM 13 OF SET FORTH, YOU KNOW, AND SO WE KNEW THAT THERE WOULD -- THAT
02:06PM 14 BECAUSE IT WAS AN INVESTMENT, THERE WOULD BE SOME RISK
02:06PM 15 ASSOCIATED WITH THAT, YOU KNOW, BUT THAT CAN TAKE LOTS OF
02:07PM 16 DIFFERENT FORMS, I GUESS.

02:07PM 17 BUT I UNDERSTOOD WHAT -- I UNDERSTOOD THAT, BY THE NATURE
02:07PM 18 OF MAKING AN INVESTMENT, THERE WAS SOME RISK ASSOCIATED WITH
02:07PM 19 THAT.

02:07PM 20 Q. THANK YOU.

02:07PM 21 NOW, ON PAGE 12, 4.5 IS ACCESS TO DATA.

02:07PM 22 DO YOU SEE THAT?

02:07PM 23 A. YES.

02:07PM 24 Q. AND THIS PARAGRAPH DISCUSSES SOME OF THE INFORMATION THAT
02:07PM 25 YOU HAD ACCESS TO; IS THAT RIGHT?

02:07PM 1 A. CORRECT.

02:07PM 2 Q. WHEN YOU HAD THAT DECEMBER 20TH PHONE CALL WITH

02:07PM 3 MS. HOLMES, WAS THE INFORMATION THAT SHE COMMUNICATED TO YOU

02:07PM 4 PART OF THE INFORMATION THAT INFORMED YOUR DECISION TO INVEST?

02:07PM 5 A. CERTAINLY IT WAS.

02:07PM 6 Q. WOULD YOU NOW LOOK AT PARAGRAPH 4.6, ACCREDITED INVESTOR.

02:07PM 7 DO YOU SEE THAT?

02:07PM 8 A. I DO.

02:07PM 9 Q. IS IT TRUE THAT THE HALL GROUP WAS AN ACCREDITED INVESTOR?

02:07PM 10 A. CORRECT.

02:07PM 11 Q. WOULD YOU NOW TURN, PLEASE, TO PAGE 32.

02:08PM 12 ON PAGE 32, IS THAT YOUR SIGNATURE?

02:08PM 13 A. THAT IS.

02:08PM 14 Q. AND THE DATE IS --

02:08PM 15 A. DECEMBER 31, 2013.

02:08PM 16 Q. AND THEN BELOW THAT, DO YOU SEE A SIGNATURE ON A LINE, AND

02:08PM 17 THE LINE INCLUDES NAME, ELIZABETH HOLMES, CEO.

02:08PM 18 DO YOU SEE THAT?

02:08PM 19 A. I DO.

02:08PM 20 Q. AND SO WE'VE TALKED ABOUT THE FACT THAT YOU WORKED FOR THE

02:08PM 21 HALL GROUP AND THERE IS A PERSON NAMED CRAIG HALL, BUT YOU ARE

02:08PM 22 SIGNING THIS DOCUMENT; IS THAT RIGHT?

02:08PM 23 A. CORRECT.

02:08PM 24 Q. AND WHY DID THAT HAPPEN? WHY WERE YOU THE ONE WHO SIGNED

02:08PM 25 THE SIGNATURE PAGE IF THE COMPANY IS CALLED HALL GROUP?

02:08PM 1 A. BECAUSE I AM AN OFFICER OF THE COMPANY AND MR. HALL HAD
02:08PM 2 GIVEN ME THE AUTHORITY TO SIGN OFF ON THIS INVESTMENT.

02:08PM 3 Q. OKAY. AFTER YOU MADE THE DECISION TO INVEST, DID YOU WIRE
02:08PM 4 FUNDS TO THERANOS?

02:08PM 5 A. WE DID.

02:08PM 6 Q. AND WAS THAT ON THE SAME DATE, DECEMBER 31ST?

02:08PM 7 A. IT WAS.

02:08PM 8 Q. DO YOU REMEMBER THE AMOUNT?

02:08PM 9 A. SO WE -- SO WE MADE AN INVESTMENT OF \$5 MILLION.

02:09PM 10 AS PART OF OUR AGREEMENT, BASED ON CONVERSATIONS WITH
02:09PM 11 ELIZABETH HOLMES AND CHRIS LUCAS, AND NOT INVESTING THROUGH
02:09PM 12 CHRIS'S FUND, WE PAID A COMMISSION TO CHRIS, I BELIEVE, OF
02:09PM 13 \$125,000.

02:09PM 14 SO THE WIRE WOULD HAVE BEEN IN THE AMOUNT OF 4 MILLION,
02:09PM 15 875, I BELIEVE.

02:09PM 16 Q. 4,875,000?

02:09PM 17 A. YES.

02:09PM 18 Q. OKAY. DID YOU INITIATE THAT WIRE?

02:09PM 19 A. I DID.

02:09PM 20 Q. AND WHERE WERE YOU WHEN YOU INITIATED THAT WIRE?

02:09PM 21 A. IN FRISCO, TEXAS.

02:09PM 22 Q. AND DID YOU MAKE THE DOLLAR AMOUNT DECISION, 4.8 MILLION,
02:09PM 23 AS OPPOSED TO A DIFFERENT AMOUNT?

02:09PM 24 A. SO WE HAD HAD A DISCUSSION ABOUT AN INVESTMENT ANYWHERE
02:09PM 25 FROM 0 UP TO \$5 MILLION.

02:09PM 1 SO BASED ON THE CONVERSATIONS AND THE THINGS THAT WE
02:10PM 2 LEARNED, I MADE A DECISION TO INVEST AN ADDITIONAL 5 MILLION.

02:10PM 3 Q. YOU SAID WE HAD HAD DISCUSSIONS.

02:10PM 4 WHO IS THE "WE"?

02:10PM 5 A. SO MR. HALL AND I HAD DISCUSSIONS ALONG THE WAY ABOUT
02:10PM 6 WHETHER TO INVEST MORE OR HOW MUCH TO INVEST, AND GIVEN THAT HE
02:10PM 7 WAS GOING TO BE TRAVELLING, HE GAVE ME THE ABILITY TO FINALIZE
02:10PM 8 WHATEVER THAT AMOUNT WAS GOING TO BE.

02:10PM 9 Q. I SEE. SO IN YOUR CONVERSATIONS WITH MR. HALL, YOU
02:10PM 10 DISCUSSED A RANGE, AND THEN YOU PICKED THE NUMBER WITHIN THE
02:10PM 11 RANGE?

02:10PM 12 A. CORRECT.

02:10PM 13 Q. AFTER DECEMBER 31ST, 2013, I WANT TO TALK TO YOU ABOUT THE
02:10PM 14 INFORMATION, IF ANY, YOU RECEIVED IN 2014 AND 2015.

02:10PM 15 DO YOU RECALL RECEIVING UPDATES FROM THERANOS DURING THAT
02:10PM 16 PERIOD OF TIME?

02:10PM 17 A. I BELIEVE WE RECEIVED A FEW UPDATES FROM THE COMPANY ALONG
02:10PM 18 THE WAY, YOU KNOW, SO THERE WERE A FEW UPDATES.

02:10PM 19 I ALSO CONTINUED TO STAY -- BECAUSE WE HAD A CONTINUING
02:10PM 20 INVESTMENT WITH CHRIS THROUGH HIS FUND, I ALSO STAYED IN CLOSE
02:11PM 21 CONTACT WITH HIM ABOUT THE COMPANY AND WHAT WAS DEVELOPING.

02:11PM 22 Q. GREAT. THANK YOU.

02:11PM 23 DID YOU READ AN ARTICLE IN "THE WALL STREET JOURNAL" IN
02:11PM 24 2015, IN OCTOBER OF 2015?

02:11PM 25 DO YOU RECALL THAT?

02:11PM 1 A. I DO.

02:11PM 2 Q. AND GENERALLY SPEAKING, WAS THE ARTICLE NEGATIVE?

02:11PM 3 A. IT WAS. IT FELT LIKE THAT WAS THE FIRST TIME THAT

02:11PM 4 SOMETHING HAD POPPED UP ON OUR RADAR SCREEN THAT WASN'T KIND

02:11PM 5 OF -- THAT WASN'T EXTREMELY POSITIVE.

02:11PM 6 Q. I'D LIKE TO ASK YOU IF, AFTER YOUR INVESTMENT IN 2013, THE

02:11PM 7 WIRE THAT WE'VE DISCUSSED, IF THERE WERE THINGS THAT YOU

02:11PM 8 LEARNED ABOUT THE THERANOS TECHNOLOGY THAT WERE DIFFERENT THAN

02:11PM 9 WHAT YOU UNDERSTOOD IT TO BE WHEN YOU MADE THE INVESTMENT.

02:11PM 10 DO YOU UNDERSTAND THAT?

02:11PM 11 MR. CAZARES: OBJECTION. FOUNDATION ABOUT THE

02:11PM 12 TECHNOLOGY.

02:11PM 13 THE COURT: WELL, THIS IS A FOUNDATION FOR THE TOPIC

02:11PM 14 THAT YOU'RE GOING TO ASK?

02:11PM 15 MR. SCHENK: YES.

02:12PM 16 THE COURT: ALL RIGHT.

02:12PM 17 DID YOU UNDERSTAND THAT THIS WAS FOUNDATIONAL TO --

02:12PM 18 THE WITNESS: I MAY GET HIM TO RE-ASK THE QUESTION?

02:12PM 19 THE COURT: OKAY, LET'S DO THAT.

02:12PM 20 BY MR. SCHENK:

02:12PM 21 Q. I'M WONDERING AFTER YOU MADE THIS WIRE TRANSFER

02:12PM 22 DECEMBER 31ST, 2013, IF AFTER THAT DATE YOU LEARNED ADDITIONAL

02:12PM 23 INFORMATION ABOUT THE TECHNOLOGY THAT WAS DIFFERENT THAN WHAT

02:12PM 24 YOU UNDERSTOOD IT TO BE WHEN YOU MADE YOUR INVESTMENT?

02:12PM 25 A. YOU KNOW, AS I RECALL --

02:12PM 1 THE COURT: EXCUSE ME. IS THAT A YES OR NO
02:12PM 2 QUESTION?
02:12PM 3 MR. SCHENK: YES.
02:12PM 4 THE WITNESS: OKAY. I'M SORRY.
02:12PM 5 YES.
02:12PM 6 BY MR. SCHENK:
02:12PM 7 Q. AND I WANT TO ASK YOU NOT WHAT IT IS YOU LEARNED, BUT THE
02:12PM 8 SOURCES.
02:12PM 9 A. AND JUST TO BE CLEAR, SO 2015 IS THE FIRST TIME THAT I
02:12PM 10 LEARNED SOMETHING THAT FELT LIKE IT WAS DIFFERENT THAN WHAT I
02:12PM 11 HAD LEARNED ALONG THE WAY.
02:12PM 12 Q. I SEE. SO BY GIVING THAT ANSWER, ARE YOU SAYING THAT THE
02:12PM 13 SOURCES WERE THE MEDIA?
02:12PM 14 A. CORRECT.
02:12PM 15 Q. OKAY. I WANT TO SHOW YOU ONE FINAL EXHIBIT.
02:12PM 16 WOULD YOU TURN TO 3086.
02:13PM 17 IS 3086 TWO EMAILS, ONE FROM THAT
02:13PM 18 SHAREHOLDERINFO@THERANOS.COM EMAIL ADDRESS, AND THEN ONE FROM
02:13PM 19 YOU AND INDIVIDUALS INCLUDING CRAIG HALL?
02:13PM 20 A. CORRECT.
02:13PM 21 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 3086.
02:13PM 22 MR. CAZARES: NO OBJECTION.
02:13PM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
02:13PM 24 (GOVERNMENT'S EXHIBIT 3086 WAS RECEIVED IN EVIDENCE.)
02:13PM 25 BY MR. SCHENK:

02:13PM 1 Q. MR. TOLBERT, I'M NOT GOING TO ASK YOU TO READ THE TWO PAGE
02:13PM 2 EMAIL, BUT DO YOU RECALL THIS? DO YOU RECALL THIS EMAIL?

02:14PM 3 A. I DO.

02:14PM 4 Q. AND GENERALLY, WHAT WAS THERANOS INFORMING YOU?

02:14PM 5 A. SO THERANOS WAS LETTING US KNOW THAT THERE HAD BEEN SOME
02:14PM 6 FINDINGS MADE FROM CMS BASED ON A VISIT THAT CMS HAD MADE TO
02:14PM 7 THEIR LAB.

02:14PM 8 AND THEN THERE HAD BEEN SOME ISSUES THAT HAD BEEN FOUND, I
02:14PM 9 THINK.

02:14PM 10 Q. AND IN IT, DOES THERANOS ALSO DESCRIBE NEW LEADERSHIP IN
02:14PM 11 THE LAB?

02:14PM 12 A. THEY DO.

02:14PM 13 Q. AND THEN IT LOOKS LIKE AT THE VERY TOP YOU FORWARD THIS
02:14PM 14 ALONG TO INDIVIDUALS, INCLUDING CRAIG HALL.

02:14PM 15 A. CORRECT.

02:14PM 16 Q. AND WHY DID YOU DO THAT?

02:14PM 17 A. YOU KNOW, CERTAINLY WE HAD GONE ON THIS INVESTMENT FROM
02:14PM 18 THE STATE OF FEELING LIKE EVERYTHING WAS GOING EXTREMELY WELL
02:14PM 19 TO, YOU KNOW, HAVING SOME QUESTIONS ABOUT IT IN THE LATER PART
02:14PM 20 OF 2015 UNTIL THIS TIME IN 2016.

02:15PM 21 AND SO, YOU KNOW, AS I FORWARDED THIS EMAIL, YOU CAN SEE
02:15PM 22 WHAT I WROTE TO MR. HALL, THAT, LOOK, HERE'S SOME MORE BAD
02:15PM 23 NEWS, AND THIS IS REALLY BAD, AND THE COMPANY HAS GOT TO FIND A
02:15PM 24 WAY TO GET IN FRONT OF THIS AND REBUT THESE ALLEGATIONS BEFORE
02:15PM 25 THINGS GET SO NEGATIVE IN THE PRESS.

02:15PM 1 Q. THANK YOU.

02:15PM 2 YOUR HONOR, MAY I HAVE ONE MOMENT?

02:15PM 3 THE COURT: YES.

02:15PM 4 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

02:15PM 5 MR. SCHENK: THANK YOU, MR. TOLBERT.

02:15PM 6 THE COURT: CROSS-EXAMINATION?

02:15PM 7 MR. CAZARES: YES, YOUR HONOR.

02:15PM 8 MAY I HAVE A SHORT COMFORT BREAK?

02:15PM 9 THE COURT: SURE. LET'S DO THAT. LET'S TAKE ABOUT

02:15PM 10 10, 15 MINUTES, 15 MINUTE BREAK, LADIES AND GENTLEMEN.

02:15PM 11 YOU MAY STAND DOWN.

02:16PM 12 (JURY OUT AT 2:16 P.M.)

02:16PM 13 THE COURT: YOU CAN STAND DOWN IF YOU WOULD LIKE.

02:16PM 14 PLEASE BE SEATED. THANK YOU. WE'LL BE IN RECESS FOR A

02:16PM 15 MOMENT.

02:16PM 16 (RECESS FROM 2:16 P.M. UNTIL 2:29 P.M.)

02:29PM 17 (JURY IN AT 2:29 P.M.)

02:29PM 18 THE COURT: WE'RE BACK ON THE RECORD.

02:29PM 19 PLEASE BE SEATED.

02:29PM 20 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

02:29PM 21 AND, COUNSEL, DO YOU HAVE CROSS-EXAMINATION?

02:29PM 22 MR. CAZARES: YES, YOUR HONOR. THANK YOU VERY MUCH.

02:30PM 23 MAY I REMOVE MY MASK, YOUR HONOR?

02:30PM 24 THE COURT: YES, OF COURSE.

02:30PM 25 MR. CAZARES: THANK YOU.

CROSS-EXAMINATION

BY MR. CAZARES:

Q. MR. TOLBERT, GOOD AFTERNOON.

A. HI.

Q. MY NAME IS STEPHEN CAZARES AND I REPRESENT MR. BALWANI.

I JUST HAVE A FEW QUESTIONS FOR YOU THIS AFTERNOON.

A. OKAY.

Q. SO I JUST WANT TO FIRST REVIEW KIND OF YOUR BACKGROUND AND MR. HALL'S BACKGROUND.

I UNDERSTAND THAT MR. HALL AND YOURSELF HAVE WORKED TOGETHER SINCE 2000 -- SINCE 1999 OR SO?

A. CORRECT.

Q. AND THIS IS RUNNING THE HALL GROUP; CORRECT?

A. CORRECT. HE RUNS THE HALL GROUP. I DON'T.

Q. YOU HELP HIM DO IT?

A. I'M NOT --

Q. I'M SORRY. AND THE PRINCIPAL BUSINESS OF THE HALL GROUP IS REAL ESTATE INVESTING; IS THAT RIGHT?

A. THAT'S ONE OF OUR PRINCIPAL BUSINESS LINES RIGHT NOW.

Q. AS WELL AS OTHERS, INCLUDING I THINK THERE WAS A WINERY IN NAPA?

A. SO WE ALSO DO -- WE'RE IN THE WINE BUSINESS IN NAPA, AND WE ALSO HAVE A BUSINESS THAT MAKES LOANS ON CONSTRUCTION RELATED PROJECTS.

Q. UH-HUH, OKAY.

02:31PM 1 AND IT WOULD BE FAIR TO DESCRIBE MR. HALL AS A SUCCESSFUL
02:31PM 2 BUSINESSMAN; CORRECT?

02:31PM 3 A. CORRECT.

02:31PM 4 Q. A SAVVY INVESTOR?

02:31PM 5 A. CORRECT.

02:31PM 6 Q. DOES HIS DUE DILIGENCE?

02:31PM 7 A. CORRECT.

02:31PM 8 Q. AND PART OF YOUR JOB IS TO HELP HIM DO THAT AND, YOU KNOW,
02:31PM 9 MAKE GOOD DECISIONS REGARDING HIS INVESTMENT PORTFOLIO?

02:31PM 10 A. THAT'S CORRECT.

02:31PM 11 Q. AND AM I CORRECT, I THINK YOU SAID THAT THE INTRODUCTION
02:31PM 12 TO THERANOS CAME FROM GARY NORDHEIMER?

02:31PM 13 A. THAT'S CORRECT.

02:31PM 14 Q. AND MR. NORDHEIMER WAS A COLLEAGUE OF MR. HALL?

02:31PM 15 A. YEAH, THEY'RE FRIENDS, ACQUAINTANCES. I'M NOT SURE OF THE
02:31PM 16 EXACT NATURE OF THEIR RELATIONSHIP, BUT, YEAH, FRIENDS.

02:31PM 17 Q. OKAY. AND ULTIMATELY MR. NORDHEIMER WOUND UP PUTTING
02:31PM 18 MR. HALL AND YOURSELF IN CONTACT WITH CHRIS LUCAS; IS THAT
02:32PM 19 RIGHT?

02:32PM 20 A. THAT'S CORRECT.

02:32PM 21 Q. AND AS YOU UNDERSTOOD IT, CHRIS LUCAS WAS ALREADY INVESTED
02:32PM 22 IN THERANOS PRIOR TO YOUR AND MR. HALL'S INITIAL INVESTMENT;
02:32PM 23 CORRECT?

02:32PM 24 A. THAT'S CORRECT.

02:32PM 25 Q. AND AS A PART OF THAT CONNECTION TO CHRIS LUCAS, YOU WERE

02:32PM 1 ULTIMATELY INTRODUCED TO DON LUCAS; CORRECT?

02:32PM 2 A. THAT IS CORRECT.

02:32PM 3 Q. AND WHEN YOU FIRST MET DON LUCAS IN THAT TIME PERIOD, THAT

02:32PM 4 EARLY 2006 TIME PERIOD --

02:32PM 5 A. OR LATE 2006.

02:32PM 6 Q. LATE -- THANK YOU FOR THE CORRECTION. LATE 2006 TIME

02:32PM 7 PERIOD, AT THE TIME YOU REALLY DIDN'T KNOW WHO DON LUCAS WAS;

02:32PM 8 CORRECT?

02:32PM 9 A. I DIDN'T.

02:32PM 10 Q. BUT YOU LEARNED?

02:32PM 11 A. I DID.

02:32PM 12 Q. AND WHAT YOU LEARNED WAS THAT MR. LUCAS WAS AN EXTREMELY

02:32PM 13 SUCCESSFUL INVESTOR HERE IN SILICON VALLEY; CORRECT?

02:32PM 14 A. THAT'S CORRECT.

02:32PM 15 Q. OKAY. AND HE WAS THE CHAIRMAN OF VERY SUCCESSFUL

02:32PM 16 COMPANIES AND ACTUALLY INVESTED EARLY IN MANY SUCCESSFUL

02:33PM 17 SILICON VALLEY COMPANIES?

02:33PM 18 A. CORRECT.

02:33PM 19 Q. AND YOU WOULD DEFINE DONE LUCAS AS A VERY SUCCESSFUL

02:33PM 20 PERSON?

02:33PM 21 A. I WOULD.

02:33PM 22 Q. AND HIS PARTICIPATION IN THERANOS HAD SOME INFLUENCE ON

02:33PM 23 YOURSELF AND MR. HALL'S WILLINGNESS TO INVEST IN THERANOS;

02:33PM 24 CORRECT?

02:33PM 25 A. IT CERTAINLY WAS A POSITIVE.

02:33PM 1 Q. SO, AGAIN, YOU SAID BACK IN THIS 2006 TIME PERIOD, I
02:33PM 2 THINK -- DO I HAVE IT RIGHT? -- YOU HAD SOME CALLS WITH
02:33PM 3 CHRIS LUCAS; CORRECT?

02:33PM 4 A. CORRECT.

02:33PM 5 Q. AND THIS RELATED TO MR. HALL'S INSTRUCTION TO LOOK INTO
02:33PM 6 THE THERANOS OPPORTUNITY; RIGHT?

02:33PM 7 A. THAT'S RIGHT.

02:33PM 8 Q. AND I THINK YOU SAID AT LEAST ONE OF THOSE CALLS WAS WITH
02:33PM 9 MS. HOLMES, OR INCLUDED MS. HOLMES?

02:33PM 10 A. THAT'S CORRECT.

02:33PM 11 Q. YOU VISITED CALIFORNIA?

02:33PM 12 A. I DID.

02:33PM 13 Q. BUT THE VISIT TO CALIFORNIA WASN'T JUST FOR THERANOS, YOU
02:33PM 14 ACTUALLY HAD OTHER BUSINESS HERE; CORRECT?

02:33PM 15 A. THAT'S CORRECT.

02:33PM 16 Q. BUT YOU KIND OF MADE A SIDE TRIP FOR THE THERANOS
02:33PM 17 BUSINESS?

02:33PM 18 A. THAT'S CORRECT.

02:33PM 19 Q. AND YOU ACTUALLY VISITED THERANOS'S FACILITIES?

02:33PM 20 A. YOU KNOW, AS I RECALL, I DID.

02:33PM 21 Q. AND THEN YOU ALSO HAD DINNER WITH CHRIS LUCAS, DON LUCAS,
02:34PM 22 AND MS. HOLMES?

02:34PM 23 A. THAT'S CORRECT.

02:34PM 24 Q. AND IN THAT DINNER, I'LL GET MY NUMBERS RIGHT, THE FOUR OF
02:34PM 25 YOU DISCUSSED THERANOS AND ITS BUSINESS?

02:34PM 1 A. THAT'S RIGHT.

02:34PM 2 Q. AND KIND OF ELIZABETH'S VISION FOR THE BUSINESS; CORRECT?

02:34PM 3 A. CORRECT.

02:34PM 4 Q. YOU DISCUSSED THE TECHNOLOGY; CORRECT?

02:34PM 5 A. CORRECT.

02:34PM 6 Q. AND EVERYONE WAS PARTICIPATING IN THIS; CORRECT?

02:34PM 7 A. YES.

02:34PM 8 Q. IT WASN'T JUST ELIZABETH, IT WAS DON AND CHRIS LUCAS?

02:34PM 9 A. THAT'S CORRECT. EVERYONE WAS PARTICIPATING.

02:34PM 10 Q. BECAUSE CHRIS AND DON LUCAS ALREADY HAD EXPERIENCE WITH

02:34PM 11 THERANOS; CORRECT?

02:34PM 12 A. THAT'S CORRECT.

02:34PM 13 Q. AND YOU HAD DINNER AND LEARNED ABOUT THERANOS.

02:34PM 14 DID YOU TAKE ANY NOTES OF THE DISCUSSION THAT EVENING?

02:34PM 15 A. I DID NOT.

02:34PM 16 Q. YOU TRIED TO DO OTHER DUE DILIGENCE, MAYBE SEARCHING THE

02:34PM 17 INTERNET OR OTHER THINGS TO LEARN WHAT YOU COULD?

02:34PM 18 A. YOU MEAN THAT NIGHT, OR?

02:34PM 19 Q. AT THAT TIME, BEFORE THE INVESTMENT.

02:34PM 20 A. AT THAT TIME?

02:35PM 21 SO I DID. SO WE, YOU KNOW, SEARCHED THE INTERNET.

02:35PM 22 WE ALSO HAD SOME OTHER DUE DILIGENCE THAT WE UNDERTOOK. I

02:35PM 23 DON'T KNOW HOW MUCH YOU WANT TO KNOW ABOUT WHAT WE DID.

02:35PM 24 Q. WHAT ELSE DID YOU DO?

02:35PM 25 A. YOU KNOW, WE HAD -- WE HAD REACHED OUT TO A PATENT

02:35PM 1 ATTORNEY, A FELLOW THAT WE KNEW WHO WAS A PATENT ATTORNEY, AND
02:35PM 2 ASKED HIM TO DO A BRIEF REVIEW OF THE INTELLECTUAL PROPERTY
02:35PM 3 THAT WAS IN PLACE AT THAT TIME.

02:35PM 4 WE REACHED OUT TO A FEW PEOPLE WHO WE KNEW WHO WERE IN
02:35PM 5 MEDICAL HEALTH CARE TECHNOLOGY COMPANIES TO HAVE SOME
02:35PM 6 THEORETICAL DISCUSSIONS ABOUT OPPORTUNITY, ABOUT IF SOMEBODY
02:35PM 7 WAS ABLE TO MEET THIS OPPORTUNITY, WHAT WOULD THAT LOOK LIKE.

02:35PM 8 SO WE HAD SOME ADDITIONAL CONVERSATIONS OUTSIDE OF JUST
02:35PM 9 THE DIRECT ONES THAT WE HAD WITH ELIZABETH.

02:35PM 10 Q. AND THIS EXTRA DUE DILIGENCE THAT YOU DID ESTABLISHED, AT
02:36PM 11 LEAST TO YOUR AND MR. HALL'S SATISFACTION, THE VISION WAS
02:36PM 12 VIABLE; RIGHT?

02:36PM 13 A. CORRECT.

02:36PM 14 Q. THERE WERE SOME PATENTS ALREADY IN PLACE?

02:36PM 15 A. THAT'S CORRECT.

02:36PM 16 Q. AND THE PERSONS YOU SPOKE TO ABOUT THE INDUSTRY BELIEVED
02:36PM 17 THIS IS POSSIBLE; CORRECT?

02:36PM 18 A. CORRECT.

02:36PM 19 Q. OKAY. AND THAT'S WHY YOU INVESTED; CORRECT?

02:36PM 20 A. YES. WELL, THAT'S NOT WHY WE INVESTED, BUT IT CERTAINLY
02:36PM 21 DIDN'T GIVE US A REASON NOT TO INVEST.

02:36PM 22 Q. CONTRIBUTED TO THE DECISION?

02:36PM 23 A. CORRECT.

02:36PM 24 Q. OKAY. BUT IT'S ALSO FAIR TO SAY THAT YOUR PRIMARY SOURCES
02:36PM 25 OF INFORMATION WERE CHRIS LUCAS, DON LUCAS, AND MS. HOLMES?

02:36PM 1 A. THAT'S CORRECT.

02:36PM 2 Q. AND AT THE TIME IN 2006, I THINK YOU ALREADY SAID IT, YOU

02:36PM 3 DIDN'T KNOW WHO MR. BALWANI WAS; CORRECT?

02:36PM 4 A. I DID NOT.

02:36PM 5 Q. AND YOU HAD NEVER SPOKEN TO MR. BALWANI?

02:36PM 6 A. I HAD NOT.

02:36PM 7 Q. OKAY.

02:36PM 8 A. I STILL HAVE NEVER SPOKEN TO MR. BALWANI.

02:36PM 9 Q. NOW, YOU DESCRIBED THE INTERIM PERIOD, I'LL CALL IT, FROM

02:37PM 10 LATE 2006 TO 2012 WHERE YOU DIDN'T REALLY GET ANY DIRECT

02:37PM 11 COMMUNICATIONS FROM THERANOS IN THE FORM OF UPDATES OR

02:37PM 12 FINANCIAL DETAILS, THAT SORT OF THING; CORRECT?

02:37PM 13 A. THAT'S CORRECT.

02:37PM 14 Q. BUT YOU DID GET PERIODIC UPDATES FROM CHRIS LUCAS?

02:37PM 15 A. THAT'S CORRECT.

02:37PM 16 Q. AND LUCAS, AT LEAST TO YOUR EYE, APPEARED TO BE

02:37PM 17 KNOWLEDGEABLE ABOUT THERANOS; CORRECT?

02:37PM 18 A. HE DID.

02:37PM 19 MY UNDERSTANDING WAS THAT HE, YOU KNOW, BY HIS ACCOUNT TO

02:37PM 20 ME, HE SPENT SOME TIME VISITING THE HEADQUARTERS, INTERACTING

02:37PM 21 WITH ELIZABETH, INTERACTING WITH OTHER MEMBERS OF THE COMPANY,

02:37PM 22 AND SO IT FELT LIKE HIS REPORTS WERE CREDIBLE.

02:37PM 23 Q. AND PERIODICALLY YOU WOULD GET UPDATES THAT SOUNDED LIKE

02:37PM 24 PROGRESS IN THE BUSINESS; CORRECT?

02:37PM 25 A. YEAH. I MEAN, REALLY EVERYONE SOUNDED LIKE PROGRESS

02:37PM 1 THROUGH THOSE YEARS.

02:37PM 2 Q. YOU LEARNED A LITTLE BIT ABOUT THE PHARMACEUTICAL
02:37PM 3 RELATIONSHIPS; CORRECT?

02:37PM 4 A. CORRECT.

02:37PM 5 Q. ULTIMATELY YOU LEARNED, THROUGH CHRIS LUCAS, DURING THIS
02:38PM 6 TIME PERIOD THAT THERE WAS A RELATIONSHIP WITH A RETAILER,
02:38PM 7 MAYBE SAFEWAY?

02:38PM 8 A. WELL, MR. LUCAS HAD REPRESENTED THAT THERE WAS
02:38PM 9 CONVERSATIONS WITH POTENTIAL RETAILERS. AT FIRST THOSE WERE
02:38PM 10 UNNAMED.

02:38PM 11 LATER SAFEWAY WAS MENTIONED, AS WELL AS WAL-MART AND
02:38PM 12 WALGREENS WERE THE THREE THAT I REMEMBER BY NAME.

02:38PM 13 Q. AND THAT WAS POSITIVE INFORMATION AS WELL?

02:38PM 14 A. THAT'S CORRECT.

02:38PM 15 Q. OKAY. POSITIVE DEVELOPMENTS; IS THAT RIGHT?

02:38PM 16 A. CORRECT. SORRY.

02:38PM 17 Q. SORRY. I ASKED THE SAME QUESTION TWICE. I'LL TRY NOT TO
02:38PM 18 DO THAT.

02:38PM 19 BUT CHRIS LUCAS, DURING THAT INTERIM PERIOD, WASN'T
02:38PM 20 PROVIDING YOU WITH FINANCIAL DETAILS; IS THAT CORRECT?

02:38PM 21 A. HE WAS NOT. WE HAD SEVERAL SPECIFIC CONVERSATIONS ABOUT
02:38PM 22 FINANCIAL INFORMATION AND, YOU KNOW, THERE WAS A LITTLE
02:38PM 23 FRUSTRATION ON OUR PART THAT THERE WASN'T MORE FINANCIAL
02:38PM 24 INFORMATION, OR ANY FINANCIAL INFORMATION, THAT CAME.

02:38PM 25 YOU KNOW, MY UNDERSTANDING WAS THAT CHRIS DIDN'T HAVE ANY

02:39PM 1 TO GIVE TO US.

02:39PM 2 YOU KNOW, AT ONE POINT IN MY NOTES, I THINK I REFERENCED
02:39PM 3 CHRIS BEING TIGHT FISTED WITH FINANCIAL INFORMATION, AND SO WE
02:39PM 4 DIDN'T HAVE A LOT OF VISIBILITY WITH FINANCIAL INFORMATION
02:39PM 5 ALONG THE WAY.

02:39PM 6 Q. SO YOU WERE INTERESTED IN THE INFORMATION, IT JUST WASN'T
02:39PM 7 FORTHCOMING?

02:39PM 8 A. CORRECT.

02:39PM 9 Q. AND IN THAT TIME PERIOD, MR. LUCAS, DID HE EVER REPORT TO
02:39PM 10 YOU CASH FLOW ISSUES THAT THERANOS WAS HAVING IN 2009?

02:39PM 11 A. NOT THAT I REMEMBER WITH ANY SPECIFICS OR WITH ANY
02:39PM 12 CLARITY.

02:39PM 13 Q. SO WERE YOU AWARE OF THE FACT THAT MR. BALWANI GUARANTEED
02:39PM 14 A \$10 MILLION LINE OF CREDIT FOR THERANOS IN AUGUST OF 2009 TO
02:39PM 15 HELP IT STAY IN BUSINESS?

02:39PM 16 A. I WAS NOT. I WAS NOT AT THAT TIME.

02:39PM 17 Q. WERE YOU AWARE OF MR. BALWANI'S ROLE AT THERANOS IN 2009?

02:39PM 18 A. YOU KNOW, MY ONLY RECOLLECTION OF MR. BALWANI IS MR. LUCAS
02:40PM 19 HAD REFERENCED AT SOME POINT THAT ELIZABETH HAD A BOYFRIEND WHO
02:40PM 20 HAD BEEN VERY SUCCESSFUL AND WHO IS NOW ENGAGED IN THE
02:40PM 21 BUSINESS.

02:40PM 22 AND THEN AT SOME POINT, YOU KNOW, IN ONE OF OUR NEXT
02:40PM 23 UPDATES, CHRIS HAD TOLD ME WHO -- WHAT HIS NAME WAS.

02:40PM 24 BUT I DIDN'T HAVE ANY UNDERSTANDING BEYOND THAT.

02:40PM 25 Q. OKAY. SO ULTIMATELY YOU LEARNED THAT IT WAS MR. BALWANI

02:40PM 1 WHO WAS MS. HOLMES'S BOYFRIEND WHO WORKED WITHIN THERANOS?

02:40PM 2 A. CORRECT.

02:40PM 3 Q. NOW, BUT AS YOU GOT INTO 2013, YOU BEGAN TO GET SOME
02:40PM 4 UPDATES THAT WERE HELPFUL AND NOTABLE; CORRECT?

02:40PM 5 A. CORRECT.

02:40PM 6 Q. INCLUDING, I THINK WE SAW THIS MORNING, THE ANNOUNCEMENT
02:40PM 7 RELATING TO DICK KOVACEVICH AND GENERAL MATTIS JOINING THE
02:40PM 8 BOARD.

02:40PM 9 DO YOU REMEMBER THAT?

02:40PM 10 A. THAT'S CORRECT. I'M GLAD YOU HAVE AS MUCH PROBLEM WITH
02:41PM 11 HIS NAME AS I DO.

02:41PM 12 Q. I DO. BUT THEY WERE BOTH IMPRESSIVE INDIVIDUALS JOINING
02:41PM 13 THE BOARD; CORRECT?

02:41PM 14 A. THAT'S TRUE.

02:41PM 15 Q. AND AS YOU GOT TOWARDS THE LATER 2013 TIME PERIOD WHEN YOU
02:41PM 16 INVESTED, YOU TOOK SOME COMFORT IN THE FACT THAT THERANOS HAD
02:41PM 17 AN EXPERIENCED BOARD OF DIRECTORS; CORRECT?

02:41PM 18 A. I DID. IN FACT, YOU KNOW IT WAS A VERY IMPRESSIVE BOARD.
02:41PM 19 NOT TO CAST ASPERSIONS OR BURST ANY BUBBLES OF HOW IMPORTANT
02:41PM 20 PEOPLE WERE, BUT I WAS FROM GEORGIA, I GREW UP IN GEORGIA AND
02:41PM 21 SAM NUNN WAS MY SENATOR, SO WHEN I SAW SAM NUNN'S NAME ON THE
02:41PM 22 BOARD OF DIRECTORS, I MEAN, THAT IS SOMEBODY THAT REALLY, OVER
02:41PM 23 AND ABOVE EVERYBODY ELSE, RESONATED WITH ME.

02:41PM 24 Q. FORMER SECRETARY OF STATE SHULTZ ALSO?

02:41PM 25 A. YES.

02:41PM 1 Q. AND OTHER SIMILAR PERSONS?

02:41PM 2 A. CORRECT.

02:41PM 3 Q. AND AT THE TIME, OBVIOUSLY BEING IN THE BUSINESS THAT YOU

02:41PM 4 AND MR. HALL WERE IN, YOU UNDERSTOOD THE ROLE OF THE BOARD OF

02:42PM 5 DIRECTORS IN A COMPANY LIKE THERANOS?

02:42PM 6 A. CORRECT.

02:42PM 7 Q. BUT ULTIMATELY THE BOARD HAD THE FINAL SAY ON BUSINESS

02:42PM 8 MATTERS; CORRECT?

02:42PM 9 A. YOU KNOW, THE BOARD'S PRIMARY RESPONSIBILITY, OBJECTIVE IS

02:42PM 10 OVERSIGHT OF THE MANAGEMENT OF THE COMPANY.

02:42PM 11 Q. TO ENSURE THAT MANAGEMENT IS EXECUTING ON THE COMPANY'S

02:42PM 12 BUSINESS PLAN?

02:42PM 13 A. CORRECT.

02:42PM 14 Q. TO PROTECT INVESTORS; CORRECT?

02:42PM 15 A. CORRECT.

02:42PM 16 Q. IN THAT FALL OF 2019 TIME PERIOD, YOU LEARNED ABOUT THE

02:42PM 17 END OF STEALTH MODE AND PUBLIC ANNOUNCEMENTS ABOUT THERANOS IN

02:42PM 18 THE PARTNERSHIP WITH WALGREENS; CORRECT?

02:42PM 19 A. THAT'S CORRECT.

02:42PM 20 Q. AND THAT STEALTH MODE THAT THERANOS WAS KIND OF IN FOR ALL

02:42PM 21 OF THOSE YEARS AS IT WAS GROWING AND DEVELOPING, YOU DIDN'T

02:42PM 22 VIEW NECESSARILY THAT STRATEGY AS A NEGATIVE, DID YOU?

02:42PM 23 A. ALONG THE WAY I DIDN'T, NO. CERTAINLY IT FELT STRATEGIC

02:43PM 24 ALONG THE WAY TO STAY UNDER THE RADAR SCREEN.

02:43PM 25 LIKE I REFERENCED, I WISH WE HAD SEEN A LITTLE MORE

02:43PM 1 FINANCIAL INFORMATION ALONG THE WAY.

02:43PM 2 AND, YOU KNOW, WE HAD SOME INTERNAL DISCUSSIONS ABOUT
02:43PM 3 THAT, BUT, YOU KNOW, CERTAINLY IT FELT LIKE WAITING UNTIL
02:43PM 4 THINGS WERE READY TO BE ROLLED OUT COMMERCIALY WAS A VIABLE
02:43PM 5 OPTION.

02:43PM 6 Q. FAIR ENOUGH.

02:43PM 7 YOUR HONOR, I'D LIKE TO PUBLISH 1113. I THINK IT'S
02:43PM 8 ALREADY IN EVIDENCE.

02:43PM 9 THE COURT: SURE.

02:43PM 10 MR. CAZARES: MAY I PUT IT UP ON THE SCREEN?

02:43PM 11 THE COURT: YES.

02:43PM 12 BY MR. CAZARES:

02:43PM 13 Q. SO, MR. TOLBERT, UP ON THE SCREEN IS THIS JOINT PUBLIC
02:43PM 14 ANNOUNCEMENT BY THERANOS AND WALGREENS RELATING TO THE
02:43PM 15 PARTNERSHIP.

02:43PM 16 DO YOU SEE THAT?

02:43PM 17 A. I DO.

02:43PM 18 Q. AND IT'S SEPTEMBER 9, 2013.

02:43PM 19 YOU'VE SEEN THIS BEFORE; CORRECT?

02:43PM 20 A. I HAVE.

02:43PM 21 Q. AND CONTEMPORANEOUS WITH THE RELEASE OF THE INFORMATION;
02:43PM 22 RIGHT?

02:43PM 23 A. CORRECT.

02:43PM 24 Q. OKAY. AND THIS WAS GREAT NEWS FOR YOU AS AN INVESTOR AND
02:43PM 25 FOR MR. HALL AS AN INVESTOR IN THERANOS; RIGHT?

02:44PM 1 A. THAT'S CORRECT.

02:44PM 2 Q. AFTER YEARS OF SOMEWHAT SILENCE AND SLOWED DEVELOPMENTS,

02:44PM 3 NOW A PARTNERSHIP WITH A NATIONAL AND INTERNATIONAL RETAILER TO

02:44PM 4 EXPAND THE BUSINESS, THAT WAS GREAT NEWS?

02:44PM 5 A. THAT WAS A VERY POSITIVE STEP.

02:44PM 6 Q. AND THAT HAD SOME INFLUENCE ON YOUR DECISION TO INVEST IN

02:44PM 7 DECEMBER OF 2013; RIGHT?

02:44PM 8 A. CORRECT.

02:44PM 9 Q. BECAUSE IT MADE SENSE THAT A CORPORATION LIKE WALGREENS

02:44PM 10 AND THE RESOURCES THAT THEY HAVE WOULD SEEM TO BE THE PERFECT

02:44PM 11 PARTNER FOR SOMEONE LIKE THERANOS; RIGHT?

02:44PM 12 A. THEY WERE CERTAINLY SOMEBODY THAT WAS VERY STRATEGIC.

02:44PM 13 Q. AND YOU WOULD ALSO EXPECT THAT A LARGE CORPORATION LIKE

02:44PM 14 WALGREENS WOULD HAVE AT LEAST DONE SOME OF THEIR DUE DILIGENCE

02:44PM 15 REGARDING THERANOS AND ITS TECHNOLOGY TO AT LEAST GAIN SOME

02:44PM 16 COMFORT THAT IT WAS POSSIBLE TO TAKE IT NATIONAL; RIGHT?

02:44PM 17 A. THAT'S CORRECT.

02:44PM 18 Q. NOW, YOU ALSO TESTIFIED I THINK THAT YOU -- I DON'T WANT

02:45PM 19 TO SAY DEVELOPED THE HABIT -- BUT YOU ACTIVELY SEARCHED FOR

02:45PM 20 INFORMATION ABOUT THERANOS IN THIS LATE 2013 TIME PERIOD,

02:45PM 21 PARTICULARLY AFTER THESE PUBLIC ANNOUNCEMENTS STARTED TO

02:45PM 22 SURFACE; CORRECT?

02:45PM 23 A. THAT'S CORRECT.

02:45PM 24 Q. AND WHATEVER YOU COULD GET YOUR HANDS ON, I THINK YOU

02:45PM 25 SAID, YOU DID AND YOU READ; RIGHT?

02:45PM 1 A. WHATEVER MY SEARCHS PRODUCED, I DID.

02:45PM 2 Q. SURE. AND THAT WOULD HAVE INCLUDED THERANOS'S WEBSITE;

02:45PM 3 RIGHT?

02:45PM 4 A. THAT'S CORRECT.

02:45PM 5 Q. AND SO WHATEVER WAS ON THE WEBSITE, FAIR TO SAY AT THAT

02:45PM 6 TIME YOU WOULD HAVE LOOKED AT IT? AND THIS IS LATE 2013?

02:45PM 7 A. THAT'S CORRECT.

02:45PM 8 Q. SO WHATEVER WAS ON THAT WEBSITE WOULD HAVE BEEN KNOWN TO

02:45PM 9 YOU AT THE TIME THAT YOU INVESTED; CORRECT?

02:45PM 10 A. THAT'S CORRECT.

02:45PM 11 Q. OKAY. AND IN THAT TIME PERIOD, THOUGH, YOU DID KNOW THAT

02:45PM 12 THIS ROLLOUT WITH WALGREENS WAS NEW, IT WAS NASCENT?

02:45PM 13 A. YES.

02:45PM 14 Q. JUST A FEW STORES?

02:45PM 15 A. THAT'S CORRECT. I THINK WHEN THIS ANNOUNCEMENT CAME OUT,

02:45PM 16 THERE WAS ONLY THE ONE LOCATION OPEN.

02:45PM 17 Q. YEAH. AND YOU DIDN'T HAVE A CHANCE TO VISIT THAT LOCATION

02:46PM 18 TO GET TESTED, DID YOU?

02:46PM 19 A. NOT IN 2013.

02:46PM 20 I DID GO AND GET TESTED LATER ON, BUT NOT IN 2013.

02:46PM 21 Q. AFTER YOUR INVESTMENT?

02:46PM 22 A. CORRECT.

02:46PM 23 Q. AND I THINK YOU HAD MENTIONED IN PRIOR STATEMENTS OR

02:46PM 24 TESTIMONY THAT --

02:46PM 25 MR. SCHENK: OBJECTION. INADMISSIBLE. RELEVANCE.

02:46PM 1 THE COURT: WHY DON'T YOU ASK A FOUNDATIONAL
02:46PM 2 QUESTION ABOUT THIS.
02:46PM 3 BY MR. CAZARES:
02:46PM 4 Q. YOU GOT TESTED AT A THERANOS LOCATION; CORRECT?
02:46PM 5 A. I DID GO TO THE PALO ALTO LOCATION TO GET TESTED.
02:46PM 6 Q. BECAUSE YOU WANTED TO EXPERIENCE THE FINGERSTICK
02:46PM 7 TECHNOLOGY; CORRECT?
02:46PM 8 A. CORRECT.
02:46PM 9 Q. AND YOU DID EXPERIENCE THE FINGERSTICK TECHNOLOGY?
02:46PM 10 A. I DID.
02:46PM 11 Q. YEAH. YOUR PHYSICIAN ORDERED SOME TESTS, OR A TEST THAT
02:46PM 12 WASN'T AVAILABLE ON THE FINGERSTICK, SO YOU SAID, DON'T GIVE ME
02:46PM 13 THAT ONE, I WANT TO DO THE FINGERSTICK?
02:46PM 14 A. WELL, HE ORDERED TWO OR THREE OR FOUR TESTS, AND WHEN I
02:46PM 15 GOT THERE THEY SAID, LOOK, WE CAN DO THESE WITH THE FINGERSTICK
02:46PM 16 AND THESE WITH THE REGULAR BLOOD DRAW, AND I SAID SIGN ME UP
02:46PM 17 FOR THE FINGERSTICK.
02:46PM 18 Q. AND THAT WAS COMMUNICATED TO YOU ON SITE AT THE WALGREENS?
02:47PM 19 A. THAT'S CORRECT.
02:47PM 20 Q. OKAY. NOW, YOU DESCRIBED THE PHONE CALL THAT YOU HAD, OR
02:47PM 21 ACTUALLY IT WAS A LITTLE MORE OF A CONFERENCE CALL; IS THAT
02:47PM 22 FAIR?
02:47PM 23 A. THAT'S CORRECT.
02:47PM 24 Q. WITH MS. HOLMES IN DECEMBER OF 2013?
02:47PM 25 A. IT WAS A CONFERENCE CALL.

02:47PM 1 Q. AND ON THE CALL WAS MS. HOLMES, MR. LUCAS, CHRIS LUCAS?

02:47PM 2 A. YEAH, MR. LUCAS HAD INVITED HIS INVESTOR GROUP, SO, YOU

02:47PM 3 KNOW, THE INDIVIDUALS WHO HAD INVESTED THROUGH HIS

02:47PM 4 BLACK DIAMOND ENTITY, TO HEAR FROM MS. HOLMES ON THAT DAY.

02:47PM 5 Q. AND MR. HALL ATTENDED, OR LISTENED IN?

02:47PM 6 A. HE WAS ON THE CALL.

02:47PM 7 Q. OKAY. AND YOU HAD MENTIONED ON DIRECT THAT YOU ACTUALLY

02:48PM 8 RECORDED THE CALL; CORRECT?

02:48PM 9 A. THAT'S CORRECT.

02:48PM 10 Q. AND YOU RECORDED IT BECAUSE YOU WANTED TO PRESERVE KIND OF

02:48PM 11 WHAT WAS SAID FOR FUTURE REFERENCE; RIGHT?

02:48PM 12 A. WELL, I RECORDED IT BECAUSE MR. HALL AND I HAD SOME

02:48PM 13 DISCUSSIONS PRIOR TO THAT CALL ABOUT QUESTIONS THAT WE WANTED

02:48PM 14 TO HEAR ADDRESSED.

02:48PM 15 HE WAS GOING TO BE TRAVELLING, AND I KNEW HE WOULD, YOU

02:48PM 16 KNOW, CALL ME AFTER THAT CALL AND ASK EVERYTHING THAT WAS SAID.

02:48PM 17 AND SO I RECORDED IT TO MAKE SURE THAT I DIDN'T MISS ANY

02:48PM 18 OF THE SALIENT POINTS.

02:48PM 19 Q. FAIR ENOUGH.

02:48PM 20 AND YOU'VE PRODUCED A COPY OF THAT RECORDING IN THE COURSE

02:48PM 21 OF THESE INVESTIGATIONS, HAVEN'T YOU?

02:48PM 22 A. THAT'S CORRECT.

02:48PM 23 Q. AND YOU'VE DISCUSSED THAT RECORDING WITH THE GOVERNMENT,

02:48PM 24 HAVEN'T YOU?

02:48PM 25 A. I HAVE.

02:48PM 1 Q. DID YOU LISTEN TO THE RECORDING BEFORE YOU TESTIFIED HERE
02:48PM 2 TODAY?

02:48PM 3 A. YOU MEAN DID I LISTEN TO IT TODAY?

02:48PM 4 Q. OR RECENTLY?

02:49PM 5 A. I HAVE NOT.

02:49PM 6 Q. IT'S BEEN, NOT TEN YEARS, BUT ABOUT NINE, NINE AND A THIRD
02:49PM 7 YEARS I GUESS SINCE THAT TELEPHONE CONVERSATION WITH
02:49PM 8 MS. HOLMES; RIGHT? DECEMBER OF 2013?

02:49PM 9 A. I GUESS THAT'S RIGHT.

02:49PM 10 Q. OKAY. I TRIED TO DO MY MATH.
02:49PM 11 YOU DON'T REMEMBER WORD FOR WORD WHAT MS. HOLMES SAID THAT
02:49PM 12 DAY?

02:49PM 13 A. I DO NOT.

02:49PM 14 Q. IT'S A ONE HOUR TELEPHONE CALL OR SO; RIGHT?

02:49PM 15 A. I HAVE NEVER KNOWN WORD FOR WORD WHAT WAS ON THE TAPE.

02:49PM 16 Q. OKAY. WOULD IT HELP YOU TO RECALL WHAT WAS ON THE TAPE IF
02:49PM 17 YOU LOOKED AT A TRANSCRIPT OF THE TAPE?

02:49PM 18 A. I'M CERTAIN. I'M CERTAIN IT WOULD HELP ME REMEMBER.

02:49PM 19 Q. OKAY. BUT YOU DON'T --

02:49PM 20 A. WHICH IS WHY I MADE THE RECORDING IN THE FIRST PLACE,
02:49PM 21 RIGHT?

02:49PM 22 Q. YEAH.

02:49PM 23 NOW, MR. BALWANI WAS NOT ON THAT CONFERENCE CALL; CORRECT?

02:50PM 24 A. HE WAS NOT.

02:50PM 25 Q. HE DIDN'T SAY --

02:50PM 1 A. AT LEAST TO MY KNOWLEDGE HE WAS NOT.

02:50PM 2 Q. FAIR ENOUGH.

02:50PM 3 HE DIDN'T -- HE WASN'T A SPEAKER IN THE CALL AS FAR AS YOU
02:50PM 4 KNOW?

02:50PM 5 A. HE WAS NOT.

02:50PM 6 Q. AND YOU HAVE NO KNOWLEDGE YOURSELF THAT MR. BALWANI WAS
02:50PM 7 EVEN LISTENING IN ON THE CALL; CORRECT?

02:50PM 8 A. I DON'T.

02:50PM 9 Q. AND JUST TO MAKE CLEAR, MS. HOLMES WASN'T THE ONLY SPEAKER
02:50PM 10 ON THE CALL; RIGHT?

02:50PM 11 A. SHE WAS THE ONLY OUTSIDE SPEAKER FROM THERANOS WHO WAS ON
02:50PM 12 THE CALL, BUT, I MEAN, A LOT OF THE PEOPLE ON THE CALL SPOKE AS
02:50PM 13 WELL.

02:50PM 14 Q. AND CHRIS LUCAS ASKED QUESTIONS AS WELL?

02:50PM 15 A. THAT'S CORRECT.

02:50PM 16 Q. YOU DID NOT ASK QUESTIONS ON THE CALL?

02:50PM 17 A. I DID NOT.

02:50PM 18 Q. MR. HALL ASKED A COUPLE?

02:50PM 19 A. AS I REMEMBER HE ASKED A COUPLE.

02:50PM 20 Q. NOW, IN THAT LATE TIME PERIOD, YOU, YOU INDICATED THAT IN
02:51PM 21 THE PRIOR INVESTMENT, AND EVEN IN THAT DARK PERIOD BETWEEN 2006
02:51PM 22 AND '12, YOU KIND OF SOUGHT FINANCIAL INFORMATION, WOULD HAVE
02:51PM 23 LIKED TO GET IT, BUT IT WAS NEVER FORTHCOMING; CORRECT?

02:51PM 24 A. THAT'S CORRECT.

02:51PM 25 Q. AND PRIOR TO YOUR DECEMBER 2013 INVESTMENT, YOU STILL

02:51PM 1 DIDN'T GET ANY FINANCIAL DETAILS OR INFORMATION; CORRECT?

02:51PM 2 A. WE DIDN'T.

02:51PM 3 WE ASKED FOR IT, BUT THAT WASN'T PROVIDED.

02:51PM 4 Q. AND NOTWITHSTANDING THAT FACT, YOU STILL, YOU AND MR. HALL
02:51PM 5 DECIDED IT WAS WORTH IT TO INVEST; CORRECT?

02:51PM 6 A. CORRECT.

02:51PM 7 Q. AND YOU HAVE NO KNOWLEDGE OR INFORMATION THAT MR. HALL
02:51PM 8 EVER SPOKE TO MR. BALWANI EITHER; CORRECT?

02:51PM 9 A. I DO NOT.

02:51PM 10 Q. SO IT'S FAIR TO SAY THAT MR. BALWANI HAD NO RELATIONSHIP
02:51PM 11 OR CONNECTION TO YOUR 2006 INVESTMENT; CORRECT?

02:51PM 12 A. CORRECT.

02:51PM 13 Q. AND MR. BALWANI HIMSELF HAD NO INFLUENCE ON YOUR DECISION
02:52PM 14 TO INVEST IN 2013; CORRECT?

02:52PM 15 A. CORRECT.

02:52PM 16 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

02:52PM 17 THE COURT: REDIRECT?

02:52PM 18 MR. SCHENK: YES. THANK YOU.

02:52PM 19 **REDIRECT EXAMINATION**

02:52PM 20 BY MR. SCHENK:

02:52PM 21 Q. GOOD AFTERNOON AGAIN, MR. TOLBERT.

02:52PM 22 THERE'S JUST ONE AREA I WANT TO FOLLOW UP ON, AND THAT WAS
02:52PM 23 THE RESPONSIBILITY OF THE BOARD OF DIRECTORS. I THINK YOU WERE
02:52PM 24 ASKED SOME QUESTIONS ABOUT THAT?

02:52PM 25 DO YOU RECALL THOSE QUESTIONS?

02:52PM 1 A. I DO.

02:52PM 2 Q. AND I CAN'T REMEMBER IF YOU SAID OR MR. CAZARES SAID THAT

02:52PM 3 THEY HAD AN OBLIGATION TO PROTECT INVESTORS; IS THAT RIGHT?

02:52PM 4 A. THAT'S CORRECT. HE ASKED ME IF THEY HAD A RESPONSIBILITY

02:52PM 5 TO PROTECT INVESTORS.

02:53PM 6 Q. AND ARE THERE DIFFERENT KINDS OF BOARDS OR DIRECTORS,

02:53PM 7 FIDUCIARY BOARDS, OR ADVISORY BOARDS, OR ARE ALL BOARD OF

02:53PM 8 DIRECTORS THE SAME?

02:53PM 9 A. NO. THERE ARE DIFFERENT BOARDS WITH DIFFERENT

02:53PM 10 RESPONSIBILITIES.

02:53PM 11 Q. AND DO YOU KNOW WHICH KIND THERANOS HAD?

02:53PM 12 A. YOU KNOW, I KNOW THERE WERE SOME CHANGES ALONG THE WAY,

02:53PM 13 SO, I MEAN, IT DEPENDS ON I GUESS WHAT EXACT MOMENT IN TIME.

02:53PM 14 YOU KNOW, IT'S ALSO THE CASE THAT A BOARD OF DIRECTORS,

02:53PM 15 YOU KNOW, HAS A, HAS A FIDUCIARY DUTY TO INVESTORS AND

02:53PM 16 STOCKHOLDERS AND BOND HOLDERS IN A DIFFERENT WAY WHEN, YOU

02:53PM 17 KNOW, THERE'S A CONCERN ABOUT A BUSINESS'S ONGOING VIABILITY.

02:53PM 18 Q. WHEN YOU MADE THE DECISION TO INVEST IN 2013,

02:53PM 19 DECEMBER 31ST, 2013, DID YOU KNOW WHAT KIND OF BOARD OF

02:53PM 20 DIRECTORS THERANOS HAD?

02:53PM 21 A. YOU KNOW, I THINK THEY HAD A FIDUCIARY BOARD AT THAT POINT

02:54PM 22 IS WHAT MY ASSUMPTION WOULD HAVE BEEN.

02:54PM 23 Q. WHEN YOU SAID YOUR ASSUMPTION, I'M JUST WONDERING WHAT

02:54PM 24 THAT WAS BASED ON. DO YOU REMEMBER?

02:54PM 25 A. WELL, IN 2013 I HAD ONLY SEEN THE POSTING ON THE WEBSITE

02:54PM 1 ABOUT WHO WAS SERVING ON THE BOARD, SO THAT IS ALL OF THE
02:54PM 2 VISIBILITY I WOULD HAVE HAD INTO THE BOARD OR WHAT THEIR
02:54PM 3 RESPONSIBILITIES WERE.

02:54PM 4 Q. OKAY. THANK YOU VERY MUCH.

02:54PM 5 YOUR HONOR, NO FURTHER QUESTIONS.

02:54PM 6 MR. CAZARES: JUST TWO QUESTIONS.

02:54PM 7 THE COURT: SURE.

02:54PM 8 **RECROSS-EXAMINATION**

02:54PM 9 BY MR. CAZARES:

02:54PM 10 Q. MR. TOLBERT, IN THAT TIME PERIOD OF THE 2006 INVESTMENT
02:54PM 11 FORWARD AND INTO THOSE, I'LL CALL THEM, MORE SILENT YEARS INTO
02:54PM 12 2012, YOU UNDERSTOOD THAT DON LUCAS WAS AN INVESTOR IN
02:54PM 13 THERANOS; RIGHT?

02:54PM 14 A. THAT'S CORRECT.

02:54PM 15 Q. AND YOU UNDERSTOOD HE WAS A MEMBER OF THE BOARD OR
02:54PM 16 DIRECTORS; CORRECT?

02:54PM 17 A. FOR A PERIOD OF TIME HE WAS.

02:54PM 18 Q. AND HE WAS EVEN THE CHAIRMAN; CORRECT?

02:54PM 19 A. CORRECT.

02:54PM 20 Q. AND JUST TO BE CLEAR -- OH, GO AHEAD.

02:55PM 21 A. I GUESS IT DEPENDS ON WHAT EXACT MOMENT IN TIME. I KNOW
02:55PM 22 CHRIS HAD TOLD ME AT SOME POINT THAT HIS UNCLE HAD HEALTH
02:55PM 23 PROBLEMS THAT CAUSED HIM TO STEP OFF THE BOARD, AND I DON'T
02:55PM 24 REMEMBER EXACTLY WHAT MOMENT IN TIME THAT WAS.

02:55PM 25 Q. FAIR ENOUGH. AND NEW BOARD MEMBERS JOINED LATER ON?

02:55PM 1 A. CORRECT.

02:55PM 2 Q. AND JUST TO BE CLEAR, YOU PROVIDED A COPY OF THE RECORDING

02:55PM 3 OF THE CONFERENCE CALL WITH MS. HOLMES TO THE GOVERNMENT;

02:55PM 4 CORRECT?

02:55PM 5 MR. SCHENK: OBJECTION. BEYOND THE SCOPE.

02:55PM 6 THE COURT: SUSTAINED.

02:55PM 7 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

02:55PM 8 THE COURT: ANYTHING FURTHER?

02:55PM 9 MR. SCHENK: NO, YOUR HONOR.

02:55PM 10 MR. CAZARES: NO, YOUR HONOR.

02:55PM 11 THE COURT: MAY THIS WITNESS BE EXCUSED?

02:55PM 12 MR. SCHENK: YES, YOUR HONOR.

02:55PM 13 MR. CAZARES: YES, YOUR HONOR.

02:55PM 14 THE COURT: YOU'RE EXCUSED.

02:55PM 15 THE WITNESS: THANK YOU.

02:55PM 16 THE COURT: DOES THE GOVERNMENT HAVE A WITNESS TO

02:55PM 17 FILL OUR LAST 65 MINUTES?

02:55PM 18 MR. SCHENK: NO, NOT TODAY, YOUR HONOR.

02:55PM 19 THE COURT: OKAY.

02:55PM 20 JUST LEAVE THAT THERE. THEY'LL COLLECT IT. THANK YOU.

02:55PM 21 THE WITNESS: OKAY.

02:56PM 22 THE COURT: SO WE HAVE -- LET'S SEE. OUR NEXT TIME

02:56PM 23 TOGETHER, FOLKS, IS TUESDAY, TUESDAY.

02:56PM 24 AND I'M HOPING THAT WE CAN GO UNTIL 4:00 O'CLOCK ON

02:56PM 25 TUESDAY AND WE'LL HAVE WITNESSES AVAILABLE FOR US FOR TUESDAY.

02:56PM 1 AND THEN WEDNESDAY. WE'RE ONLY IN SESSION TWO DAYS NEXT
02:56PM 2 WEEK.

02:56PM 3 LEST YOU HAVE ANY CONCERNS ABOUT THIS, IT'S NOT BECAUSE
02:56PM 4 CINCO DE MAYO FALLS NEXT WEEK, I JUST WANT YOU TO KNOW THAT.
02:56PM 5 THERE'S NO CONNECTION BETWEEN THE RECESSES FOR THAT PURPOSE.
02:56PM 6 SO WE WILL BREAK AGAIN TODAY, NOW.

02:56PM 7 ANY REASON WHY WE SHOULDN'T BREAK NOW FOR THE WEEKEND?

02:56PM 8 MR. SCHENK: NO, YOUR HONOR.

02:56PM 9 MR. CAZARES: NO, YOUR HONOR.

02:56PM 10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I TOLD
02:56PM 11 YOU I'D KEEP YOU UNTIL 4:00 AND I JUST KEEP DISAPPOINTING YOU.
02:56PM 12 SO WE'RE GOING TO RECESS NOW FOR THE WEEKEND.

02:56PM 13 PLEASE -- I'LL REMIND YOU OF THE ADMONITION. PLEASE DON'T
02:56PM 14 LEARN, DISCUSS, DO ANY INVESTIGATION, OR WATCH OR READ ANYTHING
02:56PM 15 ABOUT THIS CASE DURING THE WEEKEND.

02:57PM 16 ENJOY YOUR WEEKEND, AND WE'LL SEE YOU TUESDAY NEXT,
02:57PM 17 TUESDAY NEXT AT 9:00 A.M., PLEASE.

02:57PM 18 (JURY OUT AT 2:57 P.M.)

02:57PM 19 THE COURT: THE JURY HAS LEFT FOR THE EVENING.
02:57PM 20 PLEASE BE SEATED.

02:57PM 21 JUST TO REVIEW SCHEDULE FOR NEXT WEEK IF WE COULD.

02:57PM 22 MR. SCHENK: THANK YOU, YOUR HONOR.

02:57PM 23 THE GOVERNMENT DISCLOSED YESTERDAY TWO WITNESSES TO THE
02:57PM 24 DEFENSE.

02:57PM 25 WE ALSO REMINDED THE DEFENSE THAT ON WEDNESDAY WE ARE

02:58PM 1 RECALLING MR. JHAVERI.

02:58PM 2 THE COURT: RIGHT.

02:58PM 3 MR. SCHENK: WE HAVE MADE A REPRESENTATION TO
02:58PM 4 MR. JHAVERI THAT HE WOULD START AT 9:00 A.M. ON WEDNESDAY, EVEN
02:58PM 5 IF OUR 4:00 P.M. TUESDAY WITNESS IS STILL CARRYING OVER, TO
02:58PM 6 INCREASE THE LIKELIHOOD THAT MR. JHAVERI COMPLETES HIS
02:58PM 7 TESTIMONY ON WEDNESDAY.

02:58PM 8 WE ACTUALLY REACHED OUT TO THE DEFENSE TO HELP US
02:58PM 9 ESTABLISH A SCHEDULE FOR NEXT WEEK, TO GIVE US SOME INSIGHT
02:58PM 10 INTO HOW LONG THEIR REMAINING CROSS IS OF MR. JHAVERI, BUT WE
02:58PM 11 HAVE NOT HEARD.

02:58PM 12 THAT WOULD BE HELPFUL AS WE FILL OUT THE REST OF
02:58PM 13 WEDNESDAY. WE DON'T KNOW HOW MUCH TIME WE HAVE TO FILL NEXT
02:58PM 14 TUESDAY AND WEDNESDAY GIVEN THAT MR. JHAVERI IS GOING TO BE
02:58PM 15 TAKEN POTENTIALLY OUT OF ORDER.

02:58PM 16 THE COURT: AND HE, MR. JHAVERI, IS AVAILABLE ALL
02:58PM 17 DAY ON WEDNESDAY?

02:58PM 18 MR. SCHENK: YES.

02:58PM 19 THE COURT: WE'RE NOT IN SESSION ANY OTHER DAYS NEXT
02:58PM 20 WEEK, SO LET'S SEE IF WE CAN -- DO YOU KNOW, JUST TALKING ABOUT
02:58PM 21 MR. JHAVERI, MR. COOPERSMITH, DO YOU KNOW IF WE'LL BE ABLE TO
02:59PM 22 FINISH HIM ON WEDNESDAY?

02:59PM 23 MR. COOPERSMITH: YES, YOUR HONOR. HE'S NOT BEING
02:59PM 24 RECALLED. HE'S STILL ON CROSS.

02:59PM 25 THE COURT: WELL, HIS TESTIMONY, WILL WE COMPLETE IT

02:59PM 1 ON WEDNESDAY?

02:59PM 2 MR. COOPERSMITH: WE WILL CONTINUE WITH HIS CROSS,
02:59PM 3 AND I ANTICIPATE I WILL FINISH HIS EXAMINATION WITHIN A FEW
02:59PM 4 HOURS. IT WILL DEFINITELY BE BEFORE THE END OF THE DAY.

02:59PM 5 I ANTICIPATE THERE WILL BE TIME FOR THE GOVERNMENT'S
02:59PM 6 REDIRECT AS WELL ON WEDNESDAY, BUT I WILL CHECK MY NOTES AND
02:59PM 7 CONFER WITH MR. SCHENK OVER THE WEEKEND SO THAT HE'S CLEAR ON
02:59PM 8 THAT.

02:59PM 9 THE COURT: OKAY. OKAY. THAT'S HELPFUL.

02:59PM 10 MR. SCHENK: IT IS. THANK YOU.

02:59PM 11 YES, THAT'S HELPFUL. THANK YOU.

02:59PM 12 THE COURT: SO TUESDAY WE'LL HAVE A WITNESS, AND --

02:59PM 13 MR. SCHENK: YES. YES, YOUR HONOR.

02:59PM 14 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

02:59PM 15 MR. SCHENK: THE INDIVIDUALS THAT WE DISCLOSED ARE A
02:59PM 16 CMS EMPLOYEE AND A PFIZER EMPLOYEE.

03:00PM 17 I DON'T KNOW, WE MAY HAVE TO CONFER WITH THE DEFENSE,
03:00PM 18 WHETHER THOSE FILL TUESDAY. I SUSPECT THAT THEY MIGHT.

03:00PM 19 BUT IT SOUNDS LIKE MR. JHAVERI MAY NOT FILL ALL OF
03:00PM 20 WEDNESDAY, ALTHOUGH I APPRECIATE THAT MR. COOPERSMITH WILL
03:00PM 21 PROVIDE ADDITIONAL INFORMATION TO US, ALL TO SAY IT SOUNDS LIKE
03:00PM 22 WE MAY NEED ANOTHER WITNESS IF WE'RE GOING 9:00 TO 4:00 ON TWO
03:00PM 23 DAYS NEXT WEEK, SO --

03:00PM 24 THE COURT: RIGHT.

03:00PM 25 MR. SCHENK: SO WE WILL MEET AND CONFER ON THAT.

03:00PM 1 THE COURT: OKAY. THAT'S HELPFUL.

03:00PM 2 SO DO YOU THINK -- MAYBE I MISHEARD MR. COOPERSMITH.

03:00PM 3 SO DO YOU THINK MR. JHAVERI WILL FINISH BY THE END OF
03:00PM 4 WEDNESDAY?

03:00PM 5 MR. COOPERSMITH: YES, I WOULD -- JUST ROUGHLY,
03:00PM 6 AGAIN, YOUR HONOR, I WILL TELL MR. SCHENK OVER THE WEEKEND.

03:00PM 7 THE COURT: YES.

03:00PM 8 MR. COOPERSMITH: BUT I'M THINKING MY ADDITIONAL
03:00PM 9 CROSS OF MR. JHAVERI COULD BE TWO AND A HALF HOURS, AROUND THAT
03:00PM 10 LENGTH, POSSIBLY A LITTLE LONGER.

03:00PM 11 AGAIN, I'LL CONFIRM THAT.

03:00PM 12 THE COURT: YES.

03:01PM 13 MR. COOPERSMITH: I THINK THAT'S WHAT WE'RE TALKING
03:01PM 14 ABOUT.

03:01PM 15 THE COURT: GREAT.

03:01PM 16 MR. COOPERSMITH: REDIRECT, I DON'T KNOW OBVIOUSLY
03:01PM 17 HOW LONG THAT IS GOING TO TAKE. BUT THEY MIGHT WELL NEED
03:01PM 18 ANOTHER WITNESS.

03:01PM 19 IF MS. BENNETT IS THE CMS EMPLOYEE THAT MR. SCHENK IS
03:01PM 20 REFERRING TO, IF SHE TESTIFIES, THAT COULD TAKE A LITTLE WHILE
03:01PM 21 TO DEAL WITH HER.

03:01PM 22 THE COURT: SURE.

03:01PM 23 MR. COOPERSMITH: WE MAY HAVE SOME ADDITIONAL
03:01PM 24 MATTERS TO RAISE WITH THE COURT ABOUT MS. BENNETT.

03:01PM 25 AND FOR THAT MATTER, WE MAY HAVE SOME ADDITIONAL MATTERS

03:01PM 1 TO RAISE ABOUT MR. WEBER, WHO THE COURT MAY REMEMBER IS AN
03:01PM 2 EMPLOYEE OF PFIZER AND THERE'S SOME ISSUE AROUND THAT REPORT.

03:01PM 3 SO WE WILL ENDEAVOR TO BRING THOSE TO THE COURT'S
03:01PM 4 ATTENTION AT THE EARLIEST OPPORTUNITY, BUT THAT'S WHAT WE'VE
03:01PM 5 GOT.

03:01PM 6 THE COURT: OKAY. ALL RIGHT. THANK YOU.

03:01PM 7 I WAS JUST CONCERNED ABOUT MR. JHAVERI HAVING TO STAY
03:01PM 8 ANOTHER WEEK.

03:01PM 9 MR. COOPERSMITH: YOUR HONOR, THAT'S NOT MY PLAN,
03:01PM 10 YOUR HONOR. I DON'T WANT TO DO THAT TO MR. JHAVERI.

03:01PM 11 THE COURT: OKAY. GREAT. WELL, THANK YOU.

03:01PM 12 OKAY. ANYTHING FURTHER THEN BEFORE WE BREAK TODAY?

03:01PM 13 MR. SCHENK: NO. THANK YOU VERY MUCH.

03:01PM 14 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

03:01PM 15 THE COURT: THANKS VERY MUCH.

03:01PM 16 MR. COOPERSMITH: HAVE A NICE WEEKEND.

03:02PM 17 THE COURT: YOU AS WELL.

03:02PM 18 THE CLERK: COURT IS ADJOURNED.

03:02PM 19 (COURT ADJOURNED AT 3:02 P.M.)
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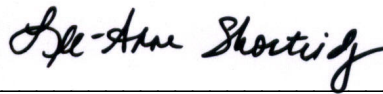
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 29, 2022